Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

EMERITA T. GUESON, M.D. PRO SE, EMERITA T. GUESON, M.D., AS PRESIDENT OF WOMEN'S HEALTH, INC.
Petitioner

v.

ALBERT W. SHEPPARD, JUDGE ET AL.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Emerita T. Gueson, M.D. Pro se
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QUESTIONS PRESENTED

1. Whether *Pro se* Plaintiff-Petitioner's Due Process and Equal Protection Clause Rights were violated, when her complaint to the District Attorney's Office was ignored following the tampering with of her two legal malpractice cases files at the Prothonotary of Philadelphia County.

2. Whether the United States Court of Appeals erred in denying the Petition of a *Pro se* Plaintiff to expand the record, where the supplemental legal documents would have served to clarify the underlying issues and would not have prejudiced any party.

3. Whether the United States Supreme Court should settle the split among the Circuit Courts of Appeals concerning the interpretation of the Lanham Act, 15 U.S.C. sec. 43(a).

4. Whether an equitable tolling principle should be applicable in RICO claim against a Plaintiff lawyer who filed two lawsuits against *Pro se* Plaintiff-Petitioner in bad faith, without requesting, obtaining, and reading the medical records of his clients.

5. Whether the City of Philadelphia Retaliated against *Pro se* Plaintiff-Petitioner when the City's legal counsel, Howard Lebofsky, filed totally baseless unfounded allegations against *Pro se* Plaintiff-Petitioner in the District Court alleging non-payment of employee city wage taxes of *Pro se* Plaintiff-Petitioner's professional corporation.

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

Emerita T. Gueson, M.D., individually, and Emerita T. Gueson,M.D., as president of Women's Health, Inc., *Pro se* Plaintiff-Petitioner

Albert Sheppard, Judge, personally, as a politician, and acting under the color of state law;

Norman Ackerman, Judge, personally, as a politician, and acting under the color of state law;

John Herron, Judge, personally, as a politician, and acting under the color of state law;

Mark Bernstein, Judge, personally, as a politician, and acting under the color of state law;

Alex Bonavitacola, Judge, personally, as a politician, and acting under the color of state law;

Philadelphia County Court of Common Pleas, First Judicial District;

Prothonotary of The Court of Common Pleas, acting under the color of state law, through and by its agents, employees;

Laura A. Feldman, Esq., personally and acting under the color of state law;

Rosemary Pinto, Esq., personally and acting under the color of state law;

Jill Anderson, Esq., personally and acting under the color of state law;

Marcia Downing, personally and acting under the color of state law;

Feldman-Pinto, P.C., personally and acting under the color of state law;

Christopher Warren, Esq., personally and acting under the color of state law;

Tawana M. McCullers,[1] personally and acting under the color of state law;

Francis G. Grey;[2]

Gustine Pelagatti, individually, and, Gustine Pelagatti, P.C.;

Bernard Nathanson, individually, and Bernard Nathanson, P.C.;

Philadelphia County, politically, and acting under the color of state law, through and by its agents, employees; Defendants-Respondents

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[1]Laura Feldman, Esq., Rosemarie Pinto, Esq. Feldman-Pinto, P.C., Jill Anderson, Christopher Warren, Esq., Marcia Downing, Tawana McCullers are not parties to this Petition.
[2]Francis Grey is not a party to this petition.

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PETITION FOR A WRIT OF CERTIORARI

Pro Se Plaintiff-Petitioner respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit in this case. The two legal malpractice cases of *Pro Se* Plaintiff-Petitioner were tampered with, while in the custody of the Prothonotary of the Court of Common Pleas of Philadelphia County.

This Court must decide whether the tampering of lawsuits filed by *Pro Se* Plaintiff-Petitioner is the accepted and usual course of judicial proceedings, or constitutes such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

At issue also, is whether a lawyer and his expert witness can be sued in a private cause of action of the RICO statute, by using the equitable tolling principles, when the lawyer brought the lawsuit in bad faith, without even requesting, obtaining, and reading the illegible medical records of his clients. These two medical malpractice cases filed against *Pro Se* Plaintiff-Petitioner cut to the very heart of the medical malpractice crisis in Pennsylvania, where most Plaintiff lawyers sue every doctor whose name is on the medical chart. These types of lawsuits have impacted on the ability of physicians to get an affordable insurance premium, forcing some doctors to relocate to a different state or give up their medical practice or retire early. This conduct of this lawyer and his expert witness has affected the healthcare access of patients especially the poor, the elderly, and the disabled in the State of Pennsylvania.

Another issue is retaliation by the City of Philadelphia against *Pro Se* Plaintiff-Petitioner's exercise of her statutorily protected activity for public concern. The First Amendment Right protects the right of our nation's citizens not only to entertain their individual

political beliefs, but also to express them. Id. At 30; See also, *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) .

OPINIONS BELOW

The opinion of the Third Circuit Court of Appeals (App. A-26–A-36) is reported at 2003 U.S. App. Lexis 16230.

The opinion of the District Court entered on August 22, 2002 in Emerita T. Gueson, M.D. et al. v. Laura Fedman, Esq. et al. This opinion was reported at 2002 U.S. Dist. Lexis 16265 and is appended at A-39–A-51.

The opinion of the District Court entered December 3, 2001 is appended at A-52–A-79, and is reported at 2001 U.S. Dist. Lexis 24210. 1-5 (E.D. PA. 2001)

The denial of petition to expand the record, which would have included the reinstatement of the thirteen medical malpractice cases which were all dismissed due to attorney's negligence is appended at A-38.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on July 11, 2003. (App. A-37) This Court has jurisdiction under 28 U.S.C. sec. 1254 (1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED:

U.S. Const. Amend. XIV, sec. 1.

First Amendment Right under 42 U.S.C. 1983

42 U.S.C. sec. 1981,1983, 1985(3) and 1986.

Civil Rights Act of 1871

Violation of RICO, 18 U.S.C. sec. 1962 (c),(d).

Violation of RICO 18 U.S.C. sec. 1341 and 1343

Lanham Act 15 U.S.C. 43 (A) section 1125(a)(1)

HealthCare Quality Act of 1986

PA. Statute Act 13

STATEMENT OF THE CASE
(Gueson v. Sheppard)

Pro se Plaintiff-Petitioner filed two legal malpractice lawsuits against Laura A. Feldman, Esq. Rosemarie Pinto, Esq., Feldman-Pinto, P.C. The two legal documents which were filed by *Pro se* Plaintiff-Petitioner were thereafter tampered with, in order to make the filing of these two lawsuits procedurally defective and susceptible to dismissal. *Pro se* Plaintiff-Petitioner sent a letter to Defendant Sheppard complaining about the situation. She also sent copies of the tampered with documents to Defendants Ackerman, Bernstein, Herron, and Bonavitacola, which were personally delivered by Reuben Ash. All of these individual Defendants were, and remain, judges of the Court of Common Pleas of Philadelphia County.

Reuben Ash and *Pro Se* Plaintiff-Petitioner personally delivered the same copy of the tampered with documents to the District Attorney's office. After a Complaint to the District Attorney's office was submitted, Prosecutor Elois Howard called *Pro Se* Plaintiff-Petitioner and advised her that she would assign a Prosecutor to her case.

Pro Se Plaintiff-Petitioner then sent her more documents. She never heard from Ms. Howard again. Incredibly, the practice of tampering with Court documents continued.

Because of the inaction of these individuals, who ironically are designated to protect the rights of all citizens, including *Pro Se* litigants. *Pro Se* Plaintiff-Petitioner decided to sue Defendants Ackerman,

Bernstein, Herron, Sheppard, and Bonavitacola. Copies of Complaint 00-cv-1117 were also served upon District Attorney Lynne Abraham and Attorney General Mike Fisher. No response has been received from either one of them.

On August 12, 1998, *Pro Se* Plaintiff-Petitioner personally filed a Writ of Summons against Laura Feldman, Esq. and Rosemarie Pinto, Esq. Feldman-Pinto, P.C., and *Pro Se* Plaintiff-Petitioner's copy of the Writ was time-stamped "August 12, 1998". On September 11, 1998, she personally filed a Praecipe to reissue the Writ of Summons and had her copy of the Writ dated August 12, 1998, re-stamped with the date "September 11, 1998."

On October 9, 1998, *Pro Se* Plaintiff-Petitioner filed another Praecipe to reissue the Writ and her copy of the previously time-stamped Writ was re-stamped "October 9, 1998." On October 28, 1998, *Pro Se* Plaintiff-Petitioner filed the Complaint for legal malpractice against Feldman, Esq. and Pinto, Esq. and Pinto & Feldman, P.C. for settling the Bell Atlantic case without advising *Pro Se* Plaintiff-Petitioner. *Pro Se* Plaintiff Petitioner had her copy of the original complaint time-stamped. This Complaint was docketed at No. 98-001361. See, 00-cv-1117 and U.S.C.A. 02-3480.

Feldman,Esq., Pinto, Esq. Feldman & Pinto, P.C. filed two preliminary objections claiming that the Complaint that was served upon them was different from the Complaint that they found in the Prothonotary.

After reading the preliminary objections of Feldman and Pinto, *Pro Se* Plaintiff-Petitioner went to the Prothonotary's office and copied the file and tried to get a copy of the docket entries. The docket entries showed that the lawsuit file docketed at 98-001361 had been tampered with. All these tampered documents are attached as exhibits to complaint 00-cv-1117, USCA 02-3480.

Pro Se Plaintiff-Petitioner was not able to get a copy of the docket entries at the office where Appeals are filed. She was told to get it in another office which was crowded and it was about to close. She went back to the office of the Prothonotary a few days later, and by that time the tampered entry had been erased.

The filing of the Writ, and the Praecipes to reissue the Writs, were all re-dated to later dates making them susceptible to dismissal under the statute of limitations. The original notarized Certificate of Service filed by For Sure Delivery Service was missing which would have shown that the Complaint was served upon Feldman and Pinto on November 2, 1998 and not November 6, 1998 as was falsely asserted by both Pinto, Esq. and Feldman, Esq., Feldman & Pinto, P.C.

The Complaint 98-03777 (Hilbert case) was separately filed on October 30, 1998. This Hilbert Complaint was incorporated with all the tampered documents of 98-01361 (Bell Atlantic) and was re-docketed as 98-01361. See, 00-cv-1117, USCA 02-3480.

Because of the "shocks the conscience" conduct of these officers of the court system, *Pro Se* Plaintiff-Petitioner decided to file parallel civil actions in Federal Court. 98-cv-6691, 98-cv-6693, 98-cv-6725. Despite the submission of copies of tampered court documents by *Pro Se* Plaintiff-Petitioner to Defendants Bonavitacola, Herron, Sheppard, Ackerman and Bernstein, no investigation took place nor was *Pro Se* Plaintiff-Petitioner advised if there would be an investigation. Following the dismissal of the Federal Actions, Gueson filed the second amended Complaint 98- 03777, and joined Francis Grey as co-Defendant. *Pro Se* Plaintiff-Petitioner specifically told the clerk that the Second Amended Complaint should be given to the Judge. Instead, Defendant Ackermann dismissed the First Amended Complaint. Defendant Ackermann's conduct

"shocks the conscience" because in his first ruling most of the preliminary objections of Feldman were overruled. More importantly, he had no jurisdiction to dismiss this case because when the Hilbert Complaint was re-docketed as 98-01361, it was already dismissed by Defendant Sheppard. See, 00-cv1117 case file

Pro Se Plaintiff-Petitioner respectfully requests this court to consider the "shocks the Conscience" standard for violation of *Pro Se* Plaintiff-Petitioner's Due Process as provided for by the Fourteenth Amendment to comport with "traditional notions of fair play and substantial justice." *Burger King*, 471 U.S. at 467 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

In *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) (stating that "{a} judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall) 335, 351 (1871). *Turner v. Pruitt*, 342 S.W.2d 422, 423 (Tex 1961) (noting that in judicial proceedings in which the court has jurisdiction, a judge is immune for his or her actions).

While protecting the individual judge, this policy likewise serves to protect the public "whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences." *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 349 n.16 (1871).

In this case at bar, the officers of the legal justice system put their personal interest above the interest of the public. *Pro se* Plaintiff-Petitioner researched the Federal Archive and did not find any case of tampering of legal documents in and under the custody of a

Prothonotary which "shocks the conscience." The only case *Pro Se* Plaintiff Petitioner found was that of Arthur Matusow, Esq. who tampered with the documents of his client, which were in his possession. Aren't legal documents in the custody of a Court Prothonotary sacrosanct? "Judicial violations" of "Pro Se litigants" civil and constitutional rights are rampant in the state courts of Pennsylvania because the Bench is For Sale. See, US. World Report, November 20, 1999. "The Very Best Judges That Money Can Buy." See, Grand Jury Investigation: The Sixteenth Statewide Investigating Grand Jury No. 8 M.D. 2000 Supreme Court of Pennsylvania 276 M.D. Misc. DKT 1999. See, Frontline interview of United States Supreme Court Justices Breyer and Kennedy with Bill Moyers. The case *County of Sacramento v. Lewis*, 523 U.S. 833 (1998) is applicable in this case.

The conduct of Defendants Bonavitacola, Herron, Bernstein, Sheppard and Ackerman is a clear authorization of departure from an established judicial proceeding – is based upon a misconception of the judicial function. One of the role of the Courts is "to make sense rather than nonsense out of the corpus juris." *West Virginia Univ Hospital, Inc. v. Casey*, 499 U.S. 83, 101 (1991). Justice Frankfurter put it another way, quoting Lord Justice Denning in *Seaford Court Estates, Ltd. v. Asher* [1949] 2 K.B. 481, 499 (C.A.): "A judge must not alter the material of which it [an act] is woven, but he can and should iron out the creases,'" Felix Frankfurter, A Symposium on Statutory Construction, Foreword, 3 Vand. L. Rev. 365, 367 (1950).

In *Gallagher v. Temple Hospital, CCP Philadelphia County* 010402643 the jury awarded $20 million against Temple Hospital because the medical records were whited out. The legal counsel for Plaintiff Gallagher stated that, it is against state law to tamper medical records. This case is another glaring example of

selective discrimination of *Pro Se* Plaintiff in the Court of Common Pleas of Philadelphia County.

STATEMENT OF THE CASE

(Gueson v. Pelagatti, et al.)

Defendant Gustine Pelagatti filed two lawsuits against *Pro Se* Plaintiff-Petitioner, without requesting, obtaining, and reading the medical records of his clients. One month after he filed the two lawsuits, he requested the medical records of his clients from Nazareth Hospital, Philadelphia, PA. The medical charts were on microfiche and were illegible. Defendant Pelagatti sued Gueson because he thought she was covered by the Pennsylvania's Catastrophic Loss Fund, an excess carrier created by the state, to satisfy medical negligence and settlements. However, the CAT FUND was not operational until January 13, 1976, which postdated the events of the two cases. Defendant Pelagatti filed the lawsuits negligently, knowingly, maliciously, and in bad faith without requesting, reading the medical records, researching the cases, and engaging the opinion of a qualified expert just like an honest and conscientious lawyer should have done. He sued Gueson as being negligent when Gueson was only one of the three obstetricians who took care of the mother of his clients. Gueson was not even the admitting obstetrician when the mother ruptured her membranes prematurely and spontaneously. She had uterine contractions with both admissions. *Pro Se* Plaintiff Petitioner's lawyer, Attorney Naomi Plakins, a competent, honest, and conscientious lawyer engaged two reputable honest experts who are both selective in giving expert opinions, and both agreed that Gueson was not negligent, but the Cerebral Palsy was caused by prematurity. Pelagatti had no idea what occurred in the nursery following the delivery of the Plaintiffs, because the medical records were illegible.

Defendant Pelagatti should stop advertising himself as an expert in Cerebral Palsy. He is not Thomas Moore, Esq. from New York City. Defendant Nathanson was looking for a fetal monitoring strips and ultrasound report in his expert report, when at the time Mrs. Kinniry delivered, the fetal monitors and ultrasound were not yet available nationwide, and there was no regionalization of Obstetrics at that time. This claim is not barred by the statute of limitation, because Plaintiff Gueson did not discover until March 1999, upon doing her research on the cases Gueson v. Feldman: 98 C.V-6691 and 98 C.V.-6275, 98 Cv 6693, that she had been a victim of a frivolous medical malpractice lawsuit and conspiracy in 1992, because for some unknown reason the motion of her legal counsel for summary judgment was thrown out in the Court of Common Pleas of Philadelphia County twice without being docketed. The Prothonotary of Philadelphia County and the clerk of Defendant Bonavitacola did not give any reason to Attorney Plakins for their refusal of the Motion For Summary Judgement, in violation of local rule. See, *Griffin v. Central Sprinkler Corp.*, 823 A.2d 191 (Pa. Super 2003).

As a direct result of the egregious conduct of Defendants Pelagatti and Nathanson *Pro Se* Plaintiff-Petitioner is now listed in the National Data Bank for Practitioners and every two years she has to provide her medical malpractice history for Credentialing by insurance companies. In addition, since this case was settled, Gueson found out that Bernard Nathanson testifies regularly for Pelagatti.

The CAT FUND which has now been repackaged as MCARE by Act 13, is a Government controlled excess insurance carrier. There are only eight states with a Catastrophic Loss Fund. Each of the seven states' excess Catastrophic Insurance Fund is run by each states' insurance department. Pennsylvania's CATASTROPHIC

Loss Fund was run differently and was under the Governor's agency and was used as a conduit to get political contributions from both the Plaintiff bar and Defense bar. A lawyer could not be in the Defense Panel for the CAT FUND (now MCARE) unless he gives political contributions to politicians. Since the passage of Act 13, MCARE was transferred to the insurance department. Nothing has changed in the way business is conducted. Lawyers who want to be in the defense panel need a powerful politician to lobby for them. This Fund continues to be mandatory. The politicians have been oblivious to the medical needs of their constituents. Physicians, Podiatrists and hospitals have been selectively discriminated against. Chiropractors, dentists, nursing homes, medical directors of HMOs' are not mandated to contribute to MCARE. The director of the CAT FUND (now MCARE) had/has no fiduciary duty to protect the integrity of the CAT Fund or MCARE. The CAT FUND was corrupt and all the people responsible for the malfeasance, and the almost five billion liability of the CAT FUND had gone scot-free. All the illegal activities and malfeasance that went on the CAT FUND were hidden from physicians, podiatrists, and the public. THE CAT FUND became the GOLDEN EGG of the Plaintiff bar. Physicians are being denied the right to make a living, because payment to the CAT FUND is tied with licensure. There is unconstitutional taking of property: the medical license.

STATEMENT OF THE CASE

(Gueson v. City of Philadelphia,
00-CV01117, USCA 02-3480)

This case has its genesis in the filing of lawsuit docketed at 00-cv-1117, Gueson v. City of Philadelphia. On May 4, 2000, *Pro Se* Plaintiff-Petitioner Gueson received a threatening letter from Defendant City of Philadelphia through and by its legal counsel Milton

Velez, alleging that the Complaint was not served upon the City. Donna Glynn signed for the Complaint when it was served upon the Court Administrator's office by Mrs. Patricia Igoe. Because of the threatening tone of the letter of Mr. Velez, Esq. *Pro Se* Plaintiff-Petitioner Gueson filed a Notice For Default Judgment against the City of Philadelphia and Defendant Francis Grey who also did not answer Complaint 00-cv-1117. Following the filing of Default Judgment Motion by *Pro Se* Plaintiff-Petitioner, the legal counsel of Defendant Grey filed the answer to complaint 00-CV-1117. Motion for Default Judgment against Defendant Grey was denied. The Motion For Default Judgment against the City of Philadelphia was not dismissed until January 24, 2002. Mr. Velez withdrew his appearance for City of Philadelphia. On September 14, 2000, Howard Lebofsky made an appearance for the City of Philadelphia. It was at this time, that *Pro Se* Plaintiff-Petitioner's professional corporation, Women's Health, Inc. started getting monthly Delinquent TAX Bill Notices from the City of Philadelphia Dept. of Revenue for employee withheld taxes which were not owed.

On February 22, 2001, Howard Lebofsky filed a totally baseless, retaliatory, defamatory, malicious, false statement in his motion to deny relief to *Pro Se* Plaintiff-Petitioner's Gueson and her professional corporation, Women's Health, Inc., that Women's Health, Inc. owes City of Philadelphia $96,524.22. City of Philadelphia fabricated all these Tax Delinquent Notices in retaliation against *Pro se* Plaintiff–Petitioner and her professional corporation, Women's Health, Inc. Gueson filed two motions for relief for the retaliatory conduct of City of Philadelphia through and by its lawyers, which were both denied. Then on November 29, 2001, without first auditing Women's Health, Inc., the City of Philadelphia (Tax Dept.) filed a lawsuit in the Court of Common Pleas of Philadelphia, which was served upon Gueson as

President of Women's Health, Inc. This unfounded and retaliatory Civil Action was filed against Gueson and her professional corporation Women's Health, Inc. It is retaliatory because the lawyer was not able to get City of Philadelphia dismissed at that time. The City's legal counsel thought the City would have a Default Judgment against it. Previously, in 1993 the City of Philadelphia also filed suit against Women's Health, Inc., when the City misfiled Women's Health, Inc. Tax Returns. In fact, Women's Health, Inc. had a tax credit in 1997. *Pro Se* Plaintiff-Petitioner removed the state court tax lawsuit to Federal Court and filed a counterclaim against City of Philadelphia and its legal counsel, which was docketed at 01-cv-6133. USCA 02-1302.

This case was remanded to the state court which was reported as 2002 U.S. Dist. Lexis 12171, 2002 U.S. App. Lexis 25245.

Following the tax audit of *Pro Se* Plaintiff-Petitioner's professional corporation the state court tax lawsuit was dismissed without prejudice, but the harassment and retaliatory conduct of the City Tax Department is continuous and continuing. Every month, *Pro Se* Plaintiff-Petitioner's professional corporation continues to get Tax Delinquent Bills. See, *Kachmar v. Sunguard Data System, Inc.* 109 F.3d 173 (3d Cir. 1997) the Court stated that "[I]n order to establish a prima facie case of discriminatory retaliation [Plaintiff] must show that ... she engaged in protected activity ...." Id. at 177 (emphasis added).

LEGAL ARGUMENTS

(Gueson v. Sheppard et al.)

The Lower Federal Courts decision was clearly erroneous in dismissing the Sec. 1983 claim against Defendants Sheppard Bonavitacola, Herron, Bernstein, and Ackerman. There were substantial due process

violations which "shocks the conscience." This Court is not foreclosed from reviewing the *Pro Se* Plainiff's Petition using the "shock the conscience" test.

Judicial Immunity and qualified immunity apply only as long as the officials' "conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id.

In determining whether qualified immunity applies, we ask: (1) whether the plaintiff has alleged the deprivation of an actual constitutional right, and if so, (2) whether the right was clearly established at the time of alleged violation. *Saucier v. Katz*, 533 U.S. 194, 200 (2001); *Eddy v. Virgin Islands Water and Power Authority*, 256 F.3d 204, 208 (3d Cir. 2001). A right is clearly established if "its outlines are sufficiently clear that a reasonable officer would understand that his actions violate the right." *Sterling v. Borough of Minersville*, 232 F.3d 190, 193 (3d Cir. 2000). The substantive component of the Due Process Clause can only be violated by governmental employees when their conduct amounts to an abuse of power that 'shocks the conscience' as the case at bar. The conduct of the unknown perpetrators of the tampering of the two legal malpractice files was deliberate, willful, malicious, repetitious, capricious, arbitrary, and detrimental to all non-lawyer *Pro Se* litigants in the state courts of Pennsylvania because they are treated as second class citizens, and it "shocks the conscience." See, *Bayonaski v. Capital Area Intermediate Unit*, 215 F.3d 396 (3d Cir. 2000). (applying the "shocks the conscience" test to a claim of civil conspiracy); *Fuentes v. Wagner*, 206 F.3d 335 (3d Cir. 2000). (finding the "shocks the conscience" standard appropriate in an excessive force claim in the context of a prison disturbance); Miller v. City of Philadelphia, 174 F.3d 368 (3d Cir. 1999). (applying) the "shocks the conscience" standard in the child custody

context). *Gottlieb v. Laurel Highlands Sch.Dist.*, 272 F.3d 168, 171-72 (3d Cir. 2001). The Third Circuit applied the "shocks the conscience" test to claims alleging excessive force by public schools officials. *Id.*

The Lower Federal Courts decision is clearly erroneous and would create manifest injustice to all *Pro Se* (non-lawyer) litigants in the state courts of Pennsylvania. There was also a pattern of conspiracy of state court officials in the way the documents were tampered with.

In order to state a claim under 42 U.S.C. sec. 1985(3), the plaintiff must allege (1) a conspiracy; (2) motivated by a racial or class based discriminatory animus to deprive, directly or indirectly, any person or class of persons [of] the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States. *Lake v. Arnold*, 112 F.3d 682, 685 (3d Cir. 1997).

The Lower Federal Courts erred in dismissing Defendants Bonavitacola, Herron, Ackerman, Sheppard, and Bernstein based on Judicial Immunity, when they are being sued personally, as politicians, and state actors. *Pro Se* Plaintiff-Petitioner's claim for damages against Defendants Bonavitacola, Herron, Ackerman, Sheppard, and Bernstein is not barred by the Doctrine of "Judicial Immunity" as this is not an action against "a Judicial Defendant" in his "Judicial function," but rather in their roles as Administrators, individually, as politicians, and acting under the color of the state law. This suit was filed against Defendants Herron, Bonavitacola, Ackerman, Bernstein, and Sheppard for their failure to act and investigate *Pro Se* Plaintiff-Petitioner's Complaint regarding the tampering with, of both legal malpractice lawsuits docketed at 98-03777 and 98-01361, acting

individually, as politicians, and under the color of the state law.

In determining absolute immunity, the Supreme Court has consistently applied a Functional test...a test that focuses on the act itself and not the identity of the actor. See, *Stump*, 435 U.S. at 360-62.

In doing so the Supreme Court has distinguished "judicial acts" to which absolute immunity necessarily attaches and "administrative acts" for which immunity is not available. Judicial acts are those involving the "performance of the function of resolving disputes between parties, or, of authoritative adjudicating private rights". *Stump,* 435 U.S. at 362. "Administrative acts are, among others, those involved in supervising court employees and overseeing the efficient operation of a court". *Forrester v. White*, 484 U.S. 219, 229-30 (1988).

Pro Se Plaintiff-Petitioner filed this case in federal court, because Plaintiff's Procedural Due Process rights as provided for by the 14th Amendment to the United States constitution were violated when she was denied "notice and opportunity for a hearing" after she filed a request for reconsideration on January 29, 1999 to Defendant Sheppard of case docketed at 98-01361. On January 29, 1999, Reuben Ash hand-delivered the copies of lawsuit files, which had both been tampered with, to the court chambers of Defendants.

Defendant Bernstein also denied *Pro Se* Plaintiff-Petitioner's motion For Extraordinary Relief For Change of Venue of case docketed at 98-03777, without giving *Pro Se* Plaintiff-Petitioner the opportunity to be heard. *Pro Se* Plaintiff-Petitioner was burdened by Defendants Bernstein, Sheppard, and Ackerman's rulings without a fair hearing, because Gueson did not receive either adequate notice or a reasonable opportunity to be heard. See, *Debler v. City of Rehoboth Beach*, 790 F.2d 328, 331

(3d Cir. 1983) citing *Parratt v. Taylor*, 451 U.S. 527 (1981), *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and *Wolff v. McDonnell*, 418 U.S. 539 (1974), See also, *Abbott v. Latshaw*, 164 F.3d 141, 146, (3d Cir. 1998).

Pro Se Plaintiff-Petitioner did not get an opportunity for a hearing appropriate to her Complaint that her two lawsuit files were tampered with, which was submitted to Defendant Herron Administrative Judge and President Judge, Defendant Bonavitacola, and Defendants Sheppard, Ackerman and Bernstein, in violation of *Pro Se* Plaintiff-Petitioner's procedural due Process as provided for by the 14th Amendment to the United States Constitution. See, *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985).

A Judge is not immune for tortious acts committed in a purely Administrative, Non-Judicial Capacity. See, *Forrester v. White*, 484 U.S. at 227-229, 108 S.Ct. at 544-545; *Stump v. Sparkman*, 435 U.S. at 380, 98 S.Ct. at 1106. *Mireles v. Waco* 112 S.Ct. 286-288. (1991).

Federal Tort Law: "Judges cannot invoke JUDICIAL IMMUNITY for acts that violate litigants civil rights." See, *Robert Clay Waters. Tort and Insurance Law Journal*, Spr. 1986, 21 n3, p. 509- 519.

Generally speaking, a judge is absolutely immune from suits for money damages and will not be deprived of immunity even if the action he took was in error, was done maliciously, or was in excess of his authority. Rather, a judge will be subject to liability only when he has acted in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435, U.S. 349, 356, 98 S.Ct 1099, 1105, 55 L.Ed.2d 331 (1978); *Figueroa v. Blackburn*, 208 F.3d 435, 443-444 (3d Cir. 2000). In the case at bar, Defendants Sheppard, Ackermann, and Bernstein had no jurisdiction

to rule upon the lawsuits filed by Gueson following the tampering with, of said legal documents.

Dismissing a lawsuit which was not the same lawsuit filed by *Pro Se* Plaintiff-Petitioner, and dismissing the same lawsuit twice after it has been tampered with, while under, and in the custody of the Court of Common Pleas of Philadelphia County by two different judges is not a legitimate judicial activity. *Pro Se* Plaintiff-Petioner Gueson wanted an opportunity to be heard, and to be given the opportunity to be heard, and to be given the opportunity to challenge the tampered with documents, and this was denied by Defendants' Sheppard, Ackerman, Herron, Bernstein, and Bonavitacola. These judges were acting individually, personally, as politicians, and acting under the color of the state law. These judges were trying to protect their own political interests, political future, and political contributions from lawyers. They acted with arrogance because Plaintiff-Petitioner is *Pro Se* and these Defendants thought that *Pro Se* Plaintiff-Petitioner would not pursue justice after her constitutional rights and civil rights were violated.

The Lower Federal Courts erred when they dismissed Defendants Bonavitacola, Herron, Ackerman, Bernstein, Sheppard, City of Philadelphia, its employees and agents, who are all being sued individually, as politicians, and as state actors based on The *Rooker Feldman Doctrine.* In light of the United States Supreme Court's decision vacating the Florida Supreme Court's November 21, 2000 decision, it is unclear at the moment that any final judgements giving rise to Rooker- Feldman concerns now exist. See, *Bush v. Palm Beach County Canv. Bd.*; 2000WL 1769093 (Dec. 4, 2000).

Gueson's civil rights claims are not barred by The *Rooker Feldman Doctrine.* The *Rooker-Feldman Doctrine* is quite simply not applicable in this case. Pro se

Plaintiff-Petitioner is not appealing the decision of the state court nor asking this court to overturn the decision of the state court nor to investigate the tampering of her two state court lawsuit files. The overwhelming precedent in the 3d circuit holds that the *Rooker-Feldman Doctrine* should be applied narrowly. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), like claim preclusion, only applies when litigants had had a "full and fair opportunity to litigate their claim in State Court." *Guarino v. Larsen* 11 F.3d at 1151 (1993), n. 8 (quoting *Valenti v. Mitchell*, 962 F.2d 288, 296 (3d Cir. 1992). *Rooker-Feldman* applies only when, in order to grant the federal plaintiff the relief sought, the Federal Court must determine that the State Court judgment was erroneously entered or must take action that would render the judgment as ineffectual as the case at bar when lawsuit docketed at 98-01361 was re-docketed as 98-03777 and lawsuit docketed at 98-03777 was re-docketed at 01361 and dates of filing of documents were changed. *Ernst v. Child and Young Services of Chester County*, 108 F.3d 486 (3d Cir. 1997).

Gueson's claims in the state court were not properly litigated according to their merits and was denied the opportunity to be heard despite her complaint of non-judicial fraudulent administrative proceedings and the issue of civil rights violations were not properly addressed by Defendants Herron, Bonavitacola, Bernstein, Sheppard, and Ackermann, when Gueson challenged the rules, practices, and procedures stemming from non-judicial fraudulent administrative proceedings such as the tampering of her two lawsuit files docketed as 98-01361 and 98-03777, by re-docketing each one and interchanging the file so that the original 98-01361 became 98-03777, and 98-03777 was re-docketed as 98-01361. Gueson's complaint of violation of federal rights of freedom of speech and the right to seek redress for

fraudulent non-judicial administrative proceedings was not addressed or investigated by Defendants. See, *Feldman*, 460 U.S. at 486; *Guarino*, 11 F.3d at 1153.

Gueson is not seeking appellate review of the decisions of Defendants Ackermann, Sheppard, and Bernstein, but to seek justice for denial of her civil rights and 14th Amendment rights as provided for by the United States Constitution. She is also pursuing this issue because the farcical politicized Pennsylvania state court judicial elections have contributed to the healthcare crisis in Pennsylvania. *Pro Se* Plaintiff-Petitioner's state court complaint and federal claims are not intertwined which makes *Rooker Feldman Doctrine* inapplicable. See, *Bush v. Palm Beach County conv. Bd. Supra.*

Gueson filed the federal claims as a challenge to the fraudulent non-judicial administrative proceedings in the State Court of Common Pleas of Philadelphia County which violated the 14th Amendment rights of *Pro Se* Plaintiff-Petitioner.

Pro Se Plaintiff-Petitioner wrote a letter to Defendant Sheppard on January 20, 1999, a copy of which was sent to Defendants Feldman, Esq. and Pinto, Esq. Defendant Sheppard admonished *Pro Se* Plaintiff-Petitioner for advising him of the tampering of her court records. No investigation took place, despite the fact that Defendants Sheppard, Ackerman, Bernstein, Herron and Bonavitacola were all given copies of the tampered documents which were personally served by Reuben Ash on January 29, 1999.

A Plaintiff is not required to bring a constitutional challenge in State Court, but if he does, a Federal Court would still have jurisdiction if the State Court never addressed the merits of a claim. *Whiteford v. Reed*, 155 F.3d 671 (1998); *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994).

Defendants Sheppard, Ackerman, Bernstein, Herron, Bonavitcola, District Attorney's office, and the Attorney General's office ignored Gueson's complaint of tampering of her legal documents while in the custody of the Prothonotary of the Court of Common Pleas; therefore, Gueson can raise this issue under the Federal Jurisdiction. *Whiteford v. Reed*, 155 F.3d 671 (1998); *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994).

The Seventh Circuit recognized that an independent claim, not barred, by *Rooker-Feldman*, arises when a Plaintiff claims that a State Tribunal was influenced by politics, causing a decision adverse to him. *Long v. Shorebank Development Corp.*, 182 F.3d 548 (7th Cir. 1999). Long had no opportunity to raise constitutional issues in State Court. Thus, the issue could not be inextricably intertwined with the State Court judgment. See, *Bush v. Gore*, 531 U.S. 98 (2000).

Rooker-Feldman Doctrine can apply only where a Plaintiff had a reasonable opportunity to raise federal claims in state proceedings. In the case at bar, Gueson's Complaint of tampering with her Court documents was totally ignored by Defendants Sheppard, Ackerman, Bernstein, Herron, Bonavitacola. The District Attorney's Office, and the Attorney General's Office also ignored Gueson's Complaint of tampering with her two lawsuit files in the Prothonotary of the Court of Common Pleas of Philadelphia County. Where *Pro Se* Plaintiff-Petitioner had no such opportunity, she can not fairly be said to have "failed" to raise the issue. Quoting the 7th Circuit opinion:

> Interpreting *Rooker* to preclude a Federal District Court from considering an issue Plaintiff had no reasonable opportunity to raise in the State Court might pose due process problems. Such a harsh rule might deprive Plaintiff from any forum, State or

> Federal, where he has a reasonable opportunity to present his Federal constitutional claims, a result arguably to the requirements of due process.

Both Supreme Court Jurisprudence and case law compel a narrow reading of the "inextricably intertwined test" *Pennzoil Co. v. Texaco, Inc.* 481 U.S. 1, 4-6 (1987). If separable from and collateral to a State Court Judgment, then a claim is not inextricably intertwined merely because an action necessitates some consideration of the State Court judgment. *Pennzoil* demonstrates that, asking a Federal Court to enjoin post-judgment collection procedures is distinguishable from asking a Federal Court to review the merits of the underlying judgment.

A Federal District Court has an obligation to exercise its Jurisdiction in the most extraordinary cases. *Hackamovitvh v. Barbara A DeBuono, As Commissioner of Health, NYS Dept. of Health*, 97-9065 (2d Cir. 1998). Hackamovitch complained of a lack of procedure to reopen medical license suspension disciplinary proceedings to present newly discovered evidence. In the case at bar, two lawsuit files of *Pro Se* Plaintiff-Petitioner Gueson were tampered with, while in the custody of the Prothonotary of the Court of Common Pleas of Philadelphia County.

A decision by the District Court on the Federal claims will not require it to determine that the State Court ruling was wrong or void. The District Court is requested to interpret the Constitution, which *Rooker-Feldman* does not. Since *Pro Se* Plaintiff-Petitioner could not get the authorities to investigate her complaint. The District Attorney's office, and the Attorney General's office also ignored Gueson's Complaint of tampering with her legal documents, therefore, she should not be precluded from raising it in a Federal Court. *Whiteford v. Reed, supra, citing Gulla v. North Strabane Township,*

Supra; E.B. v. Verniero, 119 F.3d 1077, 1091(3d Cir. 1997) (noting that if State Court had not decided merits of Plaintiff's claim, *Rooker-Feldman* would not bar federal action.)

Pro Se Plaintiff-Petitioner's claims are not barred by *Rooker-Feldman* given the fact that she tried to get Defendants to investigate the tampering of her two legal malpractice cases filed in the Court of Common Pleas of Philadelphia County, and whether *Pro Se* Plaintiff-Petitioner claims are barred by *Rooker-Feldman* given the fact that she tried to get the authorities, DA's office and Attorney General's office to investigate her Complaint which was completely ignored. Therefore, *Pro Se* Plaintiff-Petitioner is not barred from bringing these particular constitutional challenges before the United States Supreme Court by filing a Petition for a Writ of Certiorari.

The lower federal courts erred when they dismissed the 42 U.S.C. Sec. 1981 claim based on failure to state a claim against Defendants Herron, Bonavitacola, Bernstein, Sheppard and Ackerman, who intentionally discriminated against *Pro Se* Plaintiff-Petitioner because she is a Filipino, of Oriental descent; because she belongs to a protected class; because she is a minority. She is not a lawyer. She is a *Pro Se*. She does not have any political connections. She was intentionally discriminated against, and was treated differently from, by way of example, Thomas Smith, a local lawyer whose thirteen medical malpractice cases were all reinstated by Defendant Herron after they were all dismissed because of attorney's negligence. *Pro se* Plaintiff-Petitioner was denied equal protection under the law as provided for by the 14th Amendment to the United States Constitution because of her race, national origin, and profession.

The Court of Common Pleas of Philadelphia County is prejudiced against physicians, as evidenced by

the CAT FUND PAY-OUTS in Philadelphia County. *Pro Se* Plaintiff-Petitioner has alleged specific facts of prima facie case of discrimination against Defendants. Defendants Herron, Bonavitacola, Bernstein, Sheppard, and Ackerman, who intentionally discriminated against *Pro Se* Plaintiff-Petitioner because she is a Filipino, of Oriental descent; because she belongs to a protected class; because she is a minority. Second, she was treated differently from, by way of example, Thomas Smith, a local lawyer whose thirteen medical malpractice cases were all reinstated by Defendant Herron after they were all dismissed because of attorney's negligence. Third, *Pro Se* Plaintiff-Petitioner was not represented by a lawyer. Thomas Smith, Esq. who handled those cases was an employee of the James Beasley law firm. Mr. Beasley represented the Court Administrator in the *Gallas v. Supreme Court of Pennsylvania,* 211 F.3d 760 (3d Cir. 2000).

The Defendant Doctors and healthcare facilities had a battalion of defense lawyers who appealed the reinstatement of the thirteen medical malpractice cases. The Superior Court of the Commonwealth of Pennsylvania and The Pennsylvania State Supreme Court both refused to hear the Appeals. See, *Thomas Smith, Esq*, February Term 1998, No. 1164 CCP, Phila. County.

Lawyers for the two cases filed a Petition for a Writ of Certiorari to the United States Supreme Court which were both denied. I am pursuing this case because I am in search of Justice for myself and for all the present and future *Pro Se* litigants in the state court of Pennsylvania. The difference between Mr. Thomas Smith, Esq. and Emerita Gueson is that Mr. Smith had a nervous breakdown because of his personal problems, he is white and a lawyer. Gueson is a physician, non-white, and is representing herself whose legal documents were

deliberately, repeatedly tampered with, while in the custody of the Prothonotary of the Court of Common Pleas. *Pro Se* Plaintiff-Petitioner has been subjected several times to "shocks the conscience" conduct of the officers of the Court of Common Pleas of Philadelphia County in violation of her Due Process as provided for by the 14th Amendment to the United States Constitution. *Pro Se* Plaintiff-Petitioner presented documentary evidences of tampering with her two legal malpractice lawsuit files and she was denied the opportunity to be heard and the District Attorney's office and the Attorney General's office ignored her complaint. *Chock v. Northwest Airlines*, 113 F.3d 861, 862 (8th Cir. 1997). *Pro Se* Plaintiff-Petitioner has also adequately alleged a prima facie case of discrimination under the *McDonnel Douglas* standard requirement of intentional racial discrimination. See, *Patterson v. Mclean Credit Union*, 491 U.S. 164, 109 S.Ct 2363, 105 L.Ed.2d 132 (1989).

LEGAL ARGUMENT

(Gueson v. Pelagatti)

The Lower Federal courts erred in dismissing the 18 U.S.C. 1962 (c) and (d) RICO, 42 U.S.C. secs. 1981, 1983 and 1985 based on the statute of limitation, and by applying *Rotella v. Wood*, 528 U.S. 549, 120 S.Ct. 1075, 1078-80, 145 L.Ed.2d 1047 (2000).

Equitable tolling is appropriate in three scenarios.

(1) Where the Defendants actively mislead plaintiff with respect to his cause of action.

(2) Where Plaintiff has been prevented from asserting her claim as a result of extraordinary circumstances; or

(3) Where plaintiff asserts her claim in a timely manner, but mistakenly in the wrong forum.

Gueson should be allowed to use equitable tolling for all her Civil Rights Claims and RICO claims. Pelagatti stalled the discovery process. He kept on canceling the depositions of his clients. He could not produce an expert report in a timely manner. He kept on stalling because he knew there were deadlines to be followed. He could not produce an expert report until he received the chart of Dawn Kinniry in April 1995. His medical expert hired gun, Bernard Nathanson, M.D. gave him a report which showed that Nathanson is not an expert in fetal medicine. See, District Court File and Court of Appeals for the Third Circuit File.

Pro se Plaintiff-Petitioner's medical expert, Dr. William Beck refused to review the cases until the charts were sent to be reproduced and were legible for him to give his opinion. The neurology expert reviewed the reproduced charts and personally examined Plaintiffs. See, District Court file.

The Federal Statute of Limitations for RICO is four years. The settlement was not docketed and perfected until November 5, 1996. Gueson filed the lawsuit against Pelagatti on March 3, 2000. 00-CV 1117.

Gueson exercised due diligence by exhausting her administrative remedy through the Health and Human Services. She challenged her listing in the Practitioner National Data Bank which was established by the Healthcare Quality Act in 1986. The answer to her dispute did not arrive until August 1997. Gueson also did an investigation of Pelagatti to see how many of his Cerebral Palsy clients came from Easter Seal. Gueson also watched him try a case. It took Gueson several years to find the copies of the Telephone Yellow pages with Pelagatti's picture and false advertisement of himself as Cerebral Palsy expert. Gueson did not obtain the Yellow pages advertisement copies until December 28, 1999.

Under these extraordinary circumstances, equitable tolling should be applied to *Pro se* Plaintiff-Petitioner's Civil Rights and RICO Claims against Gustine Pelagatti, Esq., Gustine Pelagatti, Esq., P.C., Bernard Nathanson, M.D., and Bernard Nathanson, M.D., P.C. Under equitable tolling, plaintiffs may sue after the statutory time period for filing a complaint has expired if they have been prevented from filing in a timely manner due to sufficiently inequitable circumstances. *Ellis v. General Motors Acceptance Corp.*, 160 F.3d 703, 706 (11th Cir. 1998); *Naton v. Bank of California*, 649 F.2d 691, 696 (9th Cir. 1981); In the case at bar, *Pro se* Plaintiff-Petitioner has exercised extreme diligence in preserving her claims against Gustine Pelagatti, Esq., Gustine Pelagatti, Esq., P.C., Bernard Nathanson, M.D., and Bernard Nathanson, M.D., P.C. See, *Irwin*, 498 U.S. at 96.

Pro se Plaintiff-Petitioner had properly pled a Civil RICO Complaint. 18 U.S.C. sec. 1961 et. seq. because this Federal statute provides for both Civil and Criminal RICO causes of action. Plaintiff has standing to sue under RICO 18 U.S.C. sec. 1962 (c) and (d). because she has been injured professionally, individually, and in her business, through Plaintiff Gueson's publication in the *National Practitioner Data Bank*. See, *Shearin v. E.F. Hutton Group, Inc.*, 885 F.2d 1162. See, *Spitzer v. Abdelhak*, No. Civ. A. 98-6475, 1999 WL 1204352 at*3 (E.D.Pa. Dec. 15, 1999) (noting in dicta that recovery for damage to business and professional reputation is possible. See, *Flinders v. Datasec Corp.*, 742 F.Supp. 929 (E.D.Va. 1990) (under section 1962(d) need not demonstrate injury by RICO predicate act but merely by overt wrongful act in furtherance of same scheme.

(Gueson v. City of Philadelphia)

The City of Philadelphia through and by its employees and agents retaliated against *Pro se* Plaintiff-

Petitioner when the Solicitor's office filed a tax lawsuit against her as president of Women's Health, Inc. in the Court of Common Pleas of Philadelphia County, for exercising her constitutionally protected rights.

A. Nature of The First Amendment Right Against Retaliation. Any Section 1983 claim must identify the specific constitutional right allegedly infringed. See *Albright v. Oliver*, 510 U.S. 266, 271, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994). Plaintiff alleged that the filing of the unfounded Tax Assessment by the City of Philadelphia's Law Department, including the continuous monthly Tax Assessment notices and citations constitute unlawful retaliation. "The Supreme Court has explicitly held that an individual has a viable claim against the government when he is able to prove that the government took action against him in retaliation for his exercise of First Amendment rights." *Anderson v. Davila*, 125 F.3d 148, 160 (3d Cir. 1997) (citing *Mt. Healthy City School Dist. Bd. of Ed. v. Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977)). As the Third Circuit has indicated, [u]nder *Mt. Healthy* and its progeny, an otherwise legitimate and constitutional government act can become unconstitutional when an individual demonstrates that it was undertaken in retaliation for his exercise of First Amendment rights. This doctrine demonstrates that, at least where the First Amendment is concerned, the motives of government officials are indeed relevant, if not dispositive, when an individual's exercise of speech precedes government action affecting that individual. Id.

REASONS FOR GRANTING THE PETITION
(Gueson v. Sheppard)

1. This case involves Matters of Great Importance, including the right of any citizen to represent oneself in the exercise of The First and Fourteenth Amendments Rights, without fear of being subjected to retaliation by the state, its courts, or their agents.

The constitutional rights claimed by *Pro se* Plaintiff-Petitioner are guaranteed by the Fourteenth Amendment to the U.S. Constitution. "The Civil Rights Act of 1871 throws open the doors of the United States courts to those whose rights under the constitution are denied or impaired." *Mitchum, DBA Book Mart v. Foster*, 407 U.S. 225, 240 (1972) (citation omitted). The Civil Rights Act, 42 U.S.C.sec. 1983, "was intended to enforce the provisions of the Fourteenth Amendment against State action...whether that action be executive, legislative, or judicial." Id. (quoting *Ex parte Virginia*, 100 U.S. 339, 346 (1879) (emphasis omitted).

Given the politicization of Pennsylvania state courts,

> the United States courts are further above mere local influence than the state courts; their judges can act with more independence, cannot be put under terror, as local judges can; their sympathies are not so nearly identified with those of vicinage; they will be able to rise above prejudices or bad passions or terror more easily.

Mitchum, 407 U.S. at 241 (quoting comments of Rep. Coburn Civil Rights Act of 1871, from Cong. Globe, 42d Cong., 1st Sess., 460 (1871).

2. The Courts Below Erred in dismissing the case in its entirety, without giving Pro se Plaintiff-Petitioner the opportunity to be heard following the tampering of the official court record of two legal malpractice cases in the custody of the Prothonotary of Philadelphia County.

A. Unless this Court settles this issue, of whether *Pro se* litigants (Plaintiffs and Defendants) have the same equal right of access to judicial state courts where judges are elected, *Pro se Litigants* will continue to

suffer in the state courts of Pennsylvania and around the country.

3. The Third Circuit Court of Appeal's Decision in *Serbin v. Ziebart* 11 F.3d 1163, (3d Cir. 1993) creates a Split in the Circuit Courts.

4. Public Interest requires relief from lawsuit abuses by medical malpractice lawyers. Medical malpractice crisis is affecting healthcare access of patients.

5. This case against the City of Philadelphia is of paramount importance. *Pro Se* litigants are at the mercy of individuals in the court system who are hostile to pro se litigants.

CONCLUSION

For all the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted:

Emerita T. Gueson, M.D., Pro se
3336 Aldine Street
Philadelphia, PA. 19136
215-333-2408

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Emerita T. Gueson, M.D. Pro se, Emerita T. Gueson, M.D. As president of Women's Health, Inc. Petitioner

v.

Albert W. Sheppard, Judge Et Al., Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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Appendix A to Petition for a Writ of Certiorari

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UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-3480

EMERITA T. GUESON, INDIVIDUALLY, AND AS PRESIDENT OF WOMEN'S HEALTH, INC.; WOMEN'S HEALTH, INC.

v.

ALBERT SHEPPARD, JUDGE, personally, as a politician, and acting under the color of state law; NORMAN ACKERMAN, JUDGE, personally, as a politician, and acting under the color of state law; JOHN HERRON, JUDGE, personally, as a politician, and acting under the color of state law; ALEX BONAVITACOLA, JUDGE, personally, as a politician, and acting under the color of state law; MARK BERNSTEIN, JUDGE, personally, as a politician, and acting under the color of state law; PHILADELPHIA COUNTY COURT OF COMMON PLEAS, FIRST JUDICIAL DISTRICT, PROTHONOTARY OF THE COURT OF COMMON PLEAS, acting under the color of state law, through and by its agents, employees; FRANCIS G. GREY; LAURA FELDMAN, ESQ., personally, and acting under the color of state law; ROSEMARY PINTO, ESQ., personally, and acting under the color of state law; JILL ANDERSON, ESQ., personally, and acting under the color of state law; MARCIA DOWNING, ESQ., personally, and acting under the color of state law; FELDMAN-PINTO, P.C., personally, and acting under the color of state law; CHRISTOPHER WARREN, ESQ., personally, and acting under the color of state law; TAWANA M. MCCULLERS , personally, and acting under the color of state law;

GUSTINE PELAGATTI; BERNARD NATHANSON; PHILADELPHIA COUNTY, politically, and acting under the color of state law, through and by its agents, employees

Emerita T. Gueson, M.D., and *Women's Health, Inc.,
Appellant
*(Dismissed Per Clerk's 10/3/02 Order)

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 00-cv-01117)
District Judge: Honorable R. Barclay Sunrick

Submitted Under Third Circuit LAR 34.1(a)
July 7, 2003

BEFORE: ALITO, BARRY and ALDISERT, CIRCUIT JUDGES

(Filed: July 11, 2003)

OPINION

PER CURIAM

Appellant Emerita T. Gueson appeals the District Court's order dismissing her pro se complaint. We will affirm.

I. Relevant History

In 1998, Dr. Emerita Gueson filed two actions in the Philadelpha Court of Common Pleas, retaining the law firm of Feldman-Pinto, P.C. to represent her in both lawsuits.[1] Dissatisfied with the results in both of these cases, Gueson and Women's Health, Inc. filed two malpractice lawsuits in 1998 against Feldman-Pinto, P.C., and other defendants, in the Philadelphia Court of Common Pleas, Gueson, et al. v. Feldman, et al., August Term, 1998, No 01361, and Gueson, et al. v. Feldman, et al., October Term, 1998, No. 03777. Both malpractice lawsuits were subsequently dismissed with prejudice by Court of Common Pleas Judges Sheppard and Ackerman, respectively, both appellees in this lawsuit.

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[1]One lawsuit was against Bell Atlantic over an incorrect listing in the Yellow Pages and one lawsuit was against Dr. Gueson's former accountant.

In March 2000, Dr. Gueson and Women's Health, Inc.,[2] unhappy with the results of the malpractice suits, filed the current action in the United States District Court for the Eastern District of Pennsylvania against five Philadelphia Court of Common Pleas judges; the City of Philadelphia; Feldman-Pinto, P.C.; Gustine Pelagatti, an attorney who had represented one of Gueson's former patients in an unrelated medical malpractice action; and Bernard Nathanson, an expert witness in that action, alleging, *inter alia*, civil rights violations and violations of RICO and federal criminal statutes. She also brings a number of state law claims against these parties and others.

By Memorandum and Order entered December 3, 2001, the District Court granted motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) by all defendants in the actions other than Feldman-Pinto, P.C.[3] and the City of Philadelphia. The District Court reviewed Gueson's allegations against the Court of Common Pleas Judges and concluded that the claims against Judges Ackerman, Sheppard, and Bernstein were barred by judicial immunity, since their actions in dismissing her legal malpractice claims (Ackerman and Sheppard) and denying her motion for relief (Bernstein) were clearly taken in a judicial capacity. The District Court likewise determined Gueson's allegations (under 42 U.S.C. §§ 1981, 1983, 1985, and 1986) against CCP Judges Bonavitacola and Herron to be barred by the Rooker-Feldman doctrine. Her sole allegation against Judges Bonavitacola and Herron is that, in their

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[2]The instant case as to Women's Health, Inc. was dismissed on October 3,2002 for failure to timely prosecute.

[3]By notice dated February 20, 2002, Gueson notified the District Court that, pursuant to a settlement agreement, she was dismissing the charges against Feldman-Pinto, P.C. and its employees. Accordingly, they are not a party to this appeal.

capacities as President Judge and Administrative Judge, respectively, they failed to prevent unnamed employees of the Prothonotary's office from allegedly tampering with court documents in her legal malpractice suits, resulting in their dismissal by Judges Ackerman and Sheppard.

The December 3, 2001 District Court order also granted motions to dismiss by defendants Pelagatti and Nathanson, since Gueson's claims under §§ 1981, 1983, and 1985(3) were time-barred and, in any event, lacked substantive merit. Gueson's claims against Pelagatti and Nathanson under RICO were likewise dismissed as time-barred, and the claims under the Lanham Act, 15 U.S.C. § 1125(a) were dismissed for lack of standing. The District Court also dismissed Gueson's state law fraud claims against Francis Grey,[4] an accounting expert in one of the underlying state court lawsuits handled by Feldman-Pinto, P.C., and declined to exercise supplemental jurisdiction on the other state law claims against the defendants dismissed by the order.

By Memorandum and Order entered August 23, 2002, the District Court granted the City of Philadelphia's motion to dismiss, dismissing Gueson's claims against the City under 42 U.S.C. §§ 1981, 1983, 1985, and 1986, dismissing the remaining state law claims without prejudice, and closing the case. Gueson timely filed her notice of appeal on September 8, 2002.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review of a Rule 12(b)(6) dismissal is plenary. Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). The District Court's orders granting the defendants' motions to dismiss will be affirmed only if it appears that Gueson could prove no set of facts that would entitle her to relief. "[W]e must accept as true the factual allegations in the

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[4]The dismissal of the claims against Grey is not contested on appeal by Gueson.

complaint and all reasonable inferences that can be drawn therefrom." Id.

II. Issues on Appeal

Gueson raises five[5] issues on appeal. Recognizing her *pro se* status, and accordingly reading her appellate brief liberally, the issues are as follows:

1. Whether the District Court erred in dismissing her claims against Philadelphia County Court of Common Pleas Judges Ackerman, Sheppard, and Bernstein based on the doctrine of judicial immunity;[6]

2. Whether the District Court erred in determining her claims against Philadelelphia County Court of Common Pleas Judges Bonavitacola and Herron and against the City of Philadelphia, through its agents and employees, to be barred by the Rooker-Feldman doctrine;[7]

3. Whether the District Court erred in dismissing the 42 U.S.C. § 1983 claim

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[5]For ease of review, we condense the seven claims from her appellate brief to five. Issue number three in the appellate brief reiterates claims raised in issues number one and two, while issue number seven in the brief simply repeats an issue contained in issue number two. See Appellant's Brief at 1-3.

[6]In her appellate brief, Appellant mistakenly asserts that her claims against Judges Bonavitacola and Herron were dismissed because of judicial immunity; the District Court in fact determined her claims against them to be barred by the Rooker-Feldman doctrine.

[7]In her brief, Appellant mistakenly asserts that her claims against Judges Ackerman, Sheppard and Bernstein were barred by the Rooker-Feldman doctrine; the District Court in fact dismissed her claims against these three judges because of judicial immunity.

against Pelagatti, a private attorney and Nathanson, a private medical witness;

4. Whether the District Court erred in dismissing her Lanham Act claim against Pelagatti and Nathanson; and

5. Whether the District Court erred in dismissing the 42 U.S.C. § 1981 and RICO claims against Pelagatti and Nathanson as time-barred.

III. Judicial Immunity Dismissals

Gueson contends that Philadelphia County Court of Common Pleas judges Ackerman and Sheppard violated her civil rights by dismissing two legal malpractice lawsuits against Feldman-Pinto, P.C., a law firm that had unsatisfactorily represented her in two prior lawsuits. She also contends that Judge Bernstein of the Court of Common Pleas likewise violated her rights by denying her Motion for Extraordinary Relief filed on May 19, 1999. It is a well established principle that a judge is absolutely immune from suit for damages in a civil rights suit when he acts in a judicial capacity. "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, a judge "will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) (citation omitted). See also Dennis v. Sparks, 449 U.S. 24, 27 (1980) (state court judge immune from liability in a § 1983 suit, whether or not the injunction had issued as the result of a corrupt conspiracy). Gueson's allegations regarding the actions taken by Judges Ackerman, Sheppard, and Bernstein concern only actions taken in their judicial capacities while presiding over various state court matters. She asserts no allegations

which would support a determination that these judges rendered the doctrine of absolute immunity inapplicable to this case by acting in the complete absence of all jurisdiction. See Mireles v. Waco, 502 U.S. 9, 12 (1991) (per curiam).

IV. Rooker-Feldman Dismissals of CCP Judges and City of Philadelplia

A. CCP Judges

In addition to her claims against Judges Ackerman, Sheppard and Bernstein, which are barred by the doctrine of judicial immunity, Gueson also brought claims under 42 U.S.C. §§ 1981, 1983, 1985, and 1986 against President Judge Bonavitacola and Administrative Judge Herron of the Philadelphia Court of Common Pleas for their alleged failure to stop unnamed officers of the Prothonotary's office from tampering with the dockets of the underlying malpractice lawsuits. The District Court found her civil rights claims against these judges to be barred by the Rooker-Feldman doctrine.

The Rooker-Feldman doctrine bars consideration of state claims "inextricably intertwined" with the purported federal claim. See Gulla v. North Strabane Township, 146 F.3d 168, 171 (3d Cir. 1998). We have held that if "the relief requested in the federal action requires determining that the state court's decision is wrong or would void the state court's ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit." Gulla, 146 F.3d at 171 (3d Cir. 1998) (quoting FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996)). We agree that Gueson's civil rights claims against Judges Bonavitacola and Herron are barred by Rooker-Feldman.

To state a claim under § 1983, a plaintiff must show that the defendant, through conduct sanctioned under the color of state law, deprived her of a federal

constitutional or statutory right. See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 907 (3d Cir. 1997). Gueson claims that, because Judges Bonavitacola and Herron did not stop the alleged docket tampering, Judges Ackerman and Sheppard improperly dismissed the underlying lawsuits, thereby depriving her of her federal constitutional or statutory rights. The District Court was correct that in order to find such a constitutional deprivation, it would have to determine that the underlying lawsuits should not have been dismissed, and that, absent that determination, the District Court could not conclude that Gueson suffered a deprivation of her rights. Her § 1983 claim against Judges Bonavitacola and Herron is therefore barred by the Rooker-Feldman Doctrine.

To prevail on a § 1985 claim, Gueson must show, inter alia, either that she has a) been injured in her person or property, or b) deprived of having and exercising any right or privilege as a citizen of the United States by the alleged acts of Judges Bonavitacola and Herron. Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997); 42 U.S.C. § 1985(3). To determine that either of these requirements has been satisfied, the District Court would have to find that the underlying state lawsuits should not have been dismissed; accordingly, Gueson's claim under § 1985 is barred by Rooker-Feldman. Her § 1986 claim must also be dismissed, since it may be maintained only in tandem with a § 1985 claim. See McCalden v. California Library Ass'n., 955 F.2d 1214, 1223 (9th Cir. 1990).

The § 1981 claim against Judges Bonavitacola and Herron is likewise barred by Rooker-Feldman. Actions under § 1981 are permitted, inter alia, where a plaintiff has not been afforded equal access to the justice system of the United States due to racial discrimination. See Patterson v. McLean Credit Union, 491 U.S. 164, 177 (1989). Gueson's claim against Bonavitacola and Herron

under § 1981, though not entirely clear, appears to be that they were motivated by racial animus and that they therefore did not prevent unnamed employees of the Prothonotary's office from tampering with the docket, as a result of which her cases were dismissed, thus depriving her of equal access to the justice system. Because the determination of whether she was denied equal access to the justice system in violation of § 1981 and the propriety of the actions of the state court in dismissing the legal malpractice cases are "inextricably intertwined," the Rooker- Feldman doctrine bars her § 1981 claim.

B. City of Philadelphia

On appeal, Gueson also contests the District Court's dismissal under Rooker-Feldman of several claims against the City of Philadelphia, in which she alleges the City is liable for the alleged wrongful dismissal of her state court legal malpractice claims. As with her claims against Judges Bonavitacola and Herron, to the extent that she alleges the trial judges abused their discretion in dismissing her cases and that the City is liable as a result, her federal claims are inextricably intertwined with the state court decisions, and the Rooker-Feldman doctrine therefore precludes subject matter jurisdiction over those claims.[8]

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[8]In any event, Gueson's claims against the City of Philadelphia stem from the same underlying event - the alleged document tampering in her two legal malpractice cases in the Philadelphia Court of Common Pleas - as did a prior action she initiated in the Eastern District of Pennsylvania against the City of Philadelphia and the Prothonotary of the Philadelphia Court of Common Pleas. In that case, on May 20, 1999, the District Court dismissed the federal claims with prejudice. Gueson v. Feldman, et al., E.D.Pa. No. 98-6725. Accordingly, she is barred by the doctrine of claim preclusion from bringing the document tampering claims in the instant case. See e.g., Churchill v. Star Enters., 183 F.3d 184, 194 (3d Cir. 1999)("[A] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." (internal citation omitted)).

V. Section 1983 Claim against Pelagatti and Nathanson

A § 1983 claim is governed by the relevant state's statute of limitations for personal injury actions. See 42 U.S.C. § 1988. In this case, the relevant state is Pennsylvania, and the applicable statute of limitations is two years. See Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998). Pelagatti filed the medical malpractice suit against Gueson in 1992, and the case settled in 1996. Because the allegations in Gueson's § 1983 claim aver discrimination in the actual filing and pursuit of the medical malpractice suit, she had all the information she needed to file her claim in 1992. The present action was filed in March of 2000, and as Gueson offers no reasonable basis for tolling the two-year period, her § 1983 claim against Pelagatti and Nathanson must be dismissed as time-barred. In any event, her claim fails on substantive grounds, as neither Pelagatti nor Nathanson is a person acting under "color of state law" within the meaning of § 1983. See Shaw ex rel. Strain v. Strackhouse, 920 F.2d 1135, 1141-42 (3d Cir. 1990).

VI. Lanham Act Claim

Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), establishes a federal cause of action for engaging in false advertising. Gueson claims that Pelagatti, though clearly not an expert in cerebral palsy medical malpractice suits (apparently evidenced by his alleged mishandling of the aforementioned malpractice suit he filed against her, which she settled), holds himself out as such via a listing in the Bell Atlantic Yellow Pages. Gueson claims she suffered economic and professional

injury as a result of settling the lawsuit brought by Pelegatti.[9]

Gueson's claim fails. As the District Court correctly notes, we have placed limits on who has standing to bring a § 43(a) action. Serin v. Ziebart Intern. Corp., Inc., 11 F.3d 1163, 1170 (3d Cir. 1993). She must be able to state a sufficiently reasonable and cognizable commercial interest which has been or potentially will be injured by the Lanham Act violation. Because she does not do so, she lacks standing to bring her claims under the Act.

VII. Dismissal of § 1981 and RICO claims against Pelagatti and Nathanson

A § 1981 claim is governed by the relevant state's statute of limitations for personal injury actions. See 42 U.S.C. § 1988. As with a § 1983 claim, the relevant state is Pennsylvania, and the applicable statute of limitations is two years. See Zubi v. AT&T Corp., 219 F.3d 220, 222, 225-26 (3d Cir. 2000). Pelagatti filed the medical malpractice suit against Gueson in 1992, and the case settled in 1996. The allegations in Gueson's claim aver discrimination in the actual filing and pursuit of the medical malpractice suit. She had all the information she needed to file her claim in 1992, but the current action was not filed until March of 2000. Because Gueson offers no reasonable basis for tolling the two-year period, her § 1981 claim against Pelagatti and Nathanson must be dismissed as time-barred. In any event, since she alleges

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[9]According to her appellate brief, "as a result of this fraud committed by Pelagatti, [Appellant] is now listed in the National Data Bank for Practitioners and every two years she has to provide her medical malpractice history for Credentialing [sic] by insurance companies." App. Br. At 6.

no infringement of any interests protected under § 1981,[10] her claim fails on substantive grounds.

As to her RICO claims, construed by the District Court as being brought under 18 U.S.C. § 1964(c) with § 1962(c) and (d) as the underlying violations, it is clear that they are barred by the statute of limitations. For federal RICO claims under § 1963, the statute of limitations is four years. See Agency Holding Corp. v. Malley-Duff and Assocs., Inc., 483 U.S. 143,156 (1987). The time of accrual of a RICO claim and the running of its statute of limitations starts from when "plaintiffs knew or should have known of their injury." Forbes v. Eagleson, 228 F.3d 471, 484 (3d Cir. 2000). As the District Court notes, Gueson was injured, at the very latest, in 1995, when her attorney received a copy of the allegedly fraudulent medical expert report which Gueson alleges she relied upon, in part, to settle the case. As a doctor, represented by counsel, Gueson should have recognized Dr. Nathanson's medical expert as fraudulent at the time. Accordingly, the time for filing her federal RICO claim expired in 1999, four years later.

VIII. Conclusion

For the foregoing reasons, and those stated by the District Court, we will affirm the judgment of the District Court.[11]

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[10]42 U.S.C. § 1981 protects four distinct interests subject to protection against racial discrimination by the statute: (1) the "right to make and enforce contracts"; (2) the right of equal access to the judicial process, to "sue, be parties, give evidence"; (3) "full and equal benefit of all laws and proceedings for the security of persons and property:' and (4) the right to "like punishments, pains, penalties, taxes, licenses and exactions of every kind."

[11]Appellant's motions to supplement or expand the record are denied.

Submitted Under Third Circuit LAR 34.1(a)
July 7, 2003

BEFORE: ALITO, BARRY and ALDISERT, CIRCUIT JUDGES

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on August 23, 2002 be, and the same is, hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/

Acting Clerk

DATED: July 11,2003

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-3480

EMERITA T. GUESON, M.D., et al.
Appellants

V.

ALBERT SHEPPARD, JUDGE, et al.

(U.S. DC # 00-cv-01117 [Eastern District of PA]) (RBS)

Present: ALTITO, BARRY AND ALDISERT, CIRCUIT JUDGES

1. Motion by Pro Se Appellant for Leave to Expand the record.
2. Response by Appellee, City of Philadelphia, in Opposition to Motion by Pro Se Appellant to Expand the Record.
3. Reply by Pro Se Appellant to Response by Appellee, City of Philadelphia, in Opposition.
2. Clerk's Order Dated December 4, 2002 Referring the Above to the Merits Panel.

Gregory P. Kane 267 299 4946
Brief Specialist / Court Crier

O R D E R

The foregoing is denied

By the Court,

/s/
Circuit Judge

Dated: JUL 17 2003
[INITIALS]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMERITA T. GUESON, and WOMEN'S HEALTH, INC. — CIVIL ACTION

v.

LAURA FELDMAN, ESQ., et al. — NO. 00 CV 1117

MEMORANDUM AND ORDER

SURRICK, J. — AUGUST 22,2002

Plaintiffs Emerita T. Gueson and Women's Health, Inc. ("Plaintiffs") have brought this civil rights action alleging racial discrimination. Plaintiffs' First Amended Complaint, including Supplemental Complaints A and B, and addenda thereto ("Complaint") contains causes of action for civil rights violations, as well as violations of state law, against a variety of defendants. Presently before the Court is a Motion to Dismiss Pursuant to Rule 12(b)(6) filed by Defendant City of Philadelphia (the "City"). For the reasons that follow, we will GRANT Defendant's Motion to Dismiss.

I. BACKGROUND

We have recently entered a memorandum opinion in this matter that recites the factual and procedural history of the case at length. See Gueson v. Feldman, Civ. A. No. 00-CV-1117, 2001 U.S. Dist. LEXIS 24210, at *1-5 (E.D. Pa. Nov. 30, 2001). We will therefore not repeat that background here. Suffice it to say that Plaintiffs' Complaint alleges state and federal causes of action against several often unrelated defendants. The gravamen of Plaintiffs' Complaint is that the City of Philadelphia, five judges of the Court of Common Pleas of Philadelphia County, the law firm that previously

represented Plaintiffs, and an independent attorney have all discriminated against Plaintiff Emerita T. Gueson because she is a "Filipino of Oriental descent," "does not have any political connection," and because she is a physician. Plaintiffs also claim that all of the Defendants in this matter have attempted to defraud Plaintiffs.[1]

With respect to the City of Philadelphia,[2] Plaintiffs make the following claims:

In Count I of Plaintiffs' Complaint, it is alleged that "Philadelphia County, through and by its employees acting personally, and as politicians, and as state actors" violated Plaintiffs' rights under 42 U.S.C. § 1981.[3] Although the exact basis for Count I is somewhat unclear, Plaintiffs appear to allege that Ms. Gueson was discriminated against by judges in the Philadelphia County Court of Common Pleas. In Count II, Plaintiffs claim that "Philadelphia County, through and by its employees and agents, Defendant Judges Sheppard,

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[1]The caption to this case notes two plaintiffs, Emerita T. Gueson and Women's Health, Inc. However, the Complaint makes clear that the lawsuit essentially concerns Ms. Gueson alone.

[2]Plaintiffs' pleadings refer to Defendant as "Philadelphia County," "County of Philadelphia," and "City of Philadelphia." We note that "[t]he corporate entity known as the City of Philadelphia encompasses the territory of the County of Philadelphia. 53 Pa. Stat. Ann. § 16251. Plaintiffs claim exists, if at all, against the corporate entity." Handy v. Goode, No. 91-7767, 1992 U.S. Dist. LEXIS 10059 (E.D. Pa. July 29, 1992). We shall construe Plaintiffs' Complaint as alleging claims against the City of Philadelphia.

[3]42 U.S.C. § 1981 provides, in pertinent part:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Ackerman, Herron, Bonavitacola, [and] Bernstein" violated 42 U.S.C. §§ 1983,[4] 1985,[5] and 1986.[6] The

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[4]42 U.S.C. § 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory... Subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

[5]42 U.S.C. § 1985 provides, in pertinent part:

(3) If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

[6]42 U.S.C. § 1986 provides, in pertinent part:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 U.S.C. § 1985] are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented...

gravamen of Count II is essentially that these judges in the Philadelphia County Cowrt of Common Pleas wrongfully dismissed certain lawsuits brought by Ms. Gueson.

In Count III, Plaintiffs again bring claims against the City under 42 U.S.C. §§ 1983, 1985, and 1986. Plaintiffs allege that "state actors who are employees of the first Judicial District, the Court of Common Pleas, the Prothonotary of the Court of Common Pleas, and Philadelphia County" tampered with lawsuits that Plaintiffs' filed in the Court of Common Pleas as part of a "conspiracy to injure Plaintiffs and deny them the equal protection of the law as provided for by the 14th Amendment..."

In Count IV, Plaintiffs allege that the City retaliated against them in violation of 42 U.S.C. §§ 1981 and 1983. Plaintiffs contend that: (1) Ms. Gueson was discriminated against "when Defendant Sheppard admonished [her] for complaining about the tampering... of documents in lawsuit file docketed at 01361;" (2) Ms. Gueson "was intentionally discriminated against when the June 9, 1999, Answer to the Preliminary Objections was not ruled upon by Defendant Ackerman;" (3) Ms. Gueson was discriminated against by Judge Ackerman "when he refused to reconsider the tampered with documents of lawsuit file Hilbert docketed at 03777;" (4) Judges Ackerman and Sheppard "ruled upon the tampered with documents as moot... because they both wanted to keep the status quo of inefficiency of the Court of Common Pleas from the public eye;" and (5) Judges Ackerman and Sheppard "retaliated against... Gueson by dismissing the two lawsuits with prejudice..."

In Count XI of Plaintiffs' Complaint and Count Five of "Sister Supplementary Complaint A," Plaintiffs allege intentional infliction of emotional distress against the City. In both Count XI and Count Five of "Sister Supplementary Complaint A," Plaintiffs' claims arise out

of an attempt to have a lawsuit transferred from a court in Bucks County to the Philadelphia County Court of Common Pleas. Plaintiffs claim that the City is liable to them on this claim based on actions by its "agents and/or employees, Defendants' Sheppard, Ackerman, Herron, Bernstein, [and] Bonavitacola."

II. STANDARD OF REVIEW

Pro se complaints are held to a less stringent standard than pleadings drafted by lawyers. See Milhouse v. Carlson, 652 F.2d 371, 373 (3d Cir. 1981). A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) may only be granted if, taking all allegations as true and construing them in the light most favorable to the plaintiff, "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). We must determine whether, "under any reasonable reading of the pleadings, the plaintiffs may be entitled to relief." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

III. DISCUSSION

A. ROOKER-FELDMAN DOCTRINE

Before addressing the merits of Plaintiffs' claims against the City, we must determine whether we have subject-matter jurisdiction. The City argues that we lack subject matter jurisdiction pursuant to the Rooker-Feldman doctrine because Plaintiffs' claims are "inextricably intertwined" with a state court decision in a prior judicial proceeding. In response, Plaintiffs present several arguments as to why the Rooker-Feldman doctrine is not applicable to their claims against the City of Philadelphia. First, Plaintiffs argue that because there was no final adjudication in the state court proceedings, Rooker-Feldman is inapplicable. Second, Plaintiffs argue that the application of the Rooker-Feldman doctrine is inappropriate because the City of Philadelphia was not a party to the state court action, the Court of Common

Pleas judges were not parties in the state court action, and Plaintiffs did not raise civil rights or constitutional claims in the state court action. Lastly, Plaintiffs contend that the Rooker-Feldman doctrine is limited to the subject matter of the state court proceedings, in this case to the legal malpractice and RICO claims.

The Rooker-Feldman doctrine precludes federal district courts from reviewing state court adjudications either directly or indirectly. Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). "The Rooker-Feldman doctrine differs from ordinary preclusion, however, in that it is jurisdictional." In re Diet Drugs Prod. Liab. Litig., 282 F.3d 220, 240-41 (3d Cir. 2002).

> When a plaintiff seeks to litigate a claim in a federal court, the existence of a state court judgment in another case bars the federal proceeding under Rooker-Feldman only when entertaining the federal court claim would be the equivalent of an appellate review of that order. For that reason, Rooker-Feldman applies only when in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered or must take action that would render that judgment ineffectual. Marks v. Stinson, 19 F.3d 874, 886 n. 11 (3d Cir. 1994) (holding Rooker-Feldman inapplicable where "the district court could (and did) find that [the plaintiffs'] constitutional claims had merit without also finding that the [state] court erred"). As the Eighth Circuit Court of Appeals wrote recently:

> A federal district court has jurisdiction over general constitutional challenges if these claims are not inextricably intertwined with the claims asserted in state court. A claim is inextricably intertwined if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. In other words, Rooker-Feldman precludes a federal action if the relief requested in the federal action would effectively reverse the state decision or void its ruling. Accordingly, to determine whether Rooker-Feldman bars [plaintiff's] federal suit requires determining exactly what the state court held... If the relief requested in the federal action requires determining that the state court decision is wrong or would void the state court's ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit.

Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir. 1995) (citations omitted). FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996). As with the claims asserted directly against the Judges and dealt with in Gueson v. Feldman, Civ. A. No. 00-CV-1117, 2001 US. Dist. LEXIS 24210 (E.D. Pa. Nov. 30, 2001), some of Plaintiffs' claims are barred by the Rooker-Feldman doctrine. Specifically, we have no jurisdiction to consider those claims in which Plaintiffs allege that the City is liable for the wrongful dismissal of their claims. However, not all of Plaintiffs' claims against the City are barred by Rooker-Feldman. In Counts I, III, XI, and Count Five of "Sister Supplementary Complaint A," Plaintiffs allege claims that do not depend for their ultimate success upon whether the state cases were

wrongfully dismissed or not. For instance, Plaintiffs' claim in Count III that employees of the City tampered with Plaintiffs' documents in an attempt to deny them equal protection of the law does not necessarily require a finding that the Plaintiffs' claims were meritorious. Under the circumstances we conclude that the state court decisions are not inextricably intertwined with the issues raised in Counts I, XI, and Count Five of "Sister Supplementary Complaint A," and that the Rooker-Feldman doctrine does not preclude subject matter jurisdiction over these claims. Rooker-Feldman does, however, prevent us from considering Plaintiffs' claims in Counts II and IV to the extent that Plaintiffs allege that the Judges abused their discretion in dismissing Plaintiffs' cases and that the City is liable as a result. With respect to Count III, because it is a composite of different claims, we have jurisdiction to consider the claim involving tampering with Plaintiffs' court documents although we are precluded by Rooker-Feldman from hearing the claim in Count III that Plaintiffs' state court claim was wrongfully dismissed.

B. Plaintiffs' Claims Against the City of Philadelphia Based on Actions of the Judges of the Philadelphia County Court of Common Pleas

The City contends that Plaintiffs' Complaint fails to identify even one employee of the City of Philadelphia who has taken any action against them. Defendant argues that Plaintiffs' "complaint and amendments are clearly directed at the judges" who "are not employees of the City of Philadelphia but rather of the First Judicial District of Pennsylvania" and thus employees or agents of the Commonwealth of Pennsylvania.

Plaintiffs have attempted to side-step this issue and have argued that the City itself retaliated against them in violation of 42 U.S.C. § 1983. In what Plaintiffs denominate a "New MATTER" in their Memorandum of

Law in Support of Plaintiffs' Answer to Defendant's Motion to Dismiss, Plaintiffs argue that the City retaliated against them for filing the instant lawsuit and seeking a default judgment by filing an "unfounded TAX ASSESSMENT."[7] Rather than seeking to amend their complaint to include this new claim, Plaintiffs have attempted to assert this additional claim for the first time in their response to Defendant's Motion to Dismiss. This is improper pleading. A plaintiff may not raise new claims in response to a motion to dismiss. See Hang On, Inc. v. City of Arlington, 65 F.3d 1248, 1256-57 (5th Cir. 1995) (stating that because the plaintiff failed to include a particular claim in its complaint and raised the claim for the first time in a response to defendant's motion for summary judgment, the merits of the claim should not be addressed); Hammond v. City of Philadelphia, No. 00-CV-5082, 2001 U.S. Dist. LEXIS 10182, at *8-9 (E.D. Pa. June 9, 2001) ("A party may not rely on new facts in submissions in response to a motion to dismiss to defeat the motion."); Davis v. Cole, 999 F.Supp. 809, 813 (ED. Va. 1998) ("The court may not consider additional allegations when ruling on a motion to dismiss and must consider the facts asserted in the complaint, and the attached exhibits, to be true."). Because Plaintiffs have not properly pleaded this new claim against the City, we cannot take cognizance of it when considering the instant Motion to Dismiss.

Turning to the claims actually made by Plaintiffs in their Complaint, Plaintiffs allege that certain judges of the Court of Common Pleas of Philadelphia County

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[7]Plaintiffs filed several petitions seeking the entry of a default judgment against the City of Philadelphia for failing to answer the First Amended Complaint. On January 24, 2002, we denied these petitions because Plaintiffs failed to effectively serve process upon the City of Philadelphia as required by Federal Rule of Civil Procedure 4. On or about Febluary 12, 2002, Plaintiffs served the City of Philadelphia and, on March 14, 2002, the City of Philadelphia filed the instant Motion to Dismiss.

tampered with certain court documents and/or wrongfully dismissed certain lawsuits. The inference that Plaintiff appears to make is that the City is liable for the actions of these judges.[8]

In Callahan v. City of Philadelphia, 207 F.3d 668, 672 (3d Cir. 2000), the Third Circuit stated:

> The Pennsylvania constitution provides for the vesting of the Commonwealth's judicial power in a 'unified judicial system' which includes all of the courts in Pennsylvania. Pa. Const. art. V, § 1. Moreover, the constitution provides that the Pennsylvania Supreme Court will exercise 'general supervisory and administrative authority' over the unified judicial system. Pa. Const. art. V, §§ 1, 2, and 10. All courts and agencies of the unified judicial system... are part of 'Commonwealth government' and thus are state rather than local agencies. See Pa. Coast. art. V, § 6(c); 42 Pa. Cons. Stat. Ann. § 102 (West Supp. 1999); 42 Pa. Cons. Stat. § 301 (West 1981).

Callahan, 207 F.3d at 672. The Pennsylvania court system is composed of sixty judicial districts, with the Court of Common Pleas of Philadelphia County being within the First Judicial District, the territorial jurisdiction of which is Philadelphia. Id.; see also Robinson v. Court of Common Pleas of Philadelphia County, 827 F.Supp. 1210, 1211 n. 4 (E.D. Pa. 1993). It is

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[8]As previously explained, Rooker-Feldman does not bar our consideration of Plaintiffs' claims that the judges tampered with their court documents, however it does bar consideration of any claims that the suits were wrongfully dismissed.

clear that the Court of Common Pleas of Philadelphia County is not part of the local govenment; it is part of the state government. The judges of the Court of Common Pleas of Philadelphia County are not employees or agents of the City of Philadelphia and there is no basis for liability on the part of the City of Philadelphia for the actions of these judges. Accordingly, Plaintiffs' claims against the City based upon acts or omissions of the judges will be dismissed.

C. Plaintiffs' Claims Against the City of Philadelphia Based on the Actions of Certain Employees of the Prothonotary's Office

Plaintiffs allege that the City of Philadelphia is liable for the actions of certain unknown employees of the Prothonotary's Office who, Plaintiffs allege, tampered with documents that Plaintiffs filed in the state court proceedings.

It is well-settled that a municipality may not be held liable on a respondent superior theory of liability for violations of § 1983. See Monell v. Dept. of Social Services, 436 U.S. 658, 694 (1978). In other words,

> a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

Id. Likewise, a municipality may not be held liable under respondent superior for violations of §§ 1981 and 1985. See Simril v. Township of Warwick, No. 00-5668, 2001

U.S. Dist. LEXIS 11725, at *8 n. 5 (E.D. Pa. Aug. 10, 2001) ("The Court's analysis of municipal liability and the theory of respondent superior under 42 U.S .C. section 1983 applies equally to Plaintiffs' claims... under 42 U.S.C. section 1981, Jett v. Dallas Indep. Sch. Dist., 491 US. 701, 702, 105 L.Ed.2d 598, 109 S.Ct. 2702 (1989) (stating "[a] municipality may not be held liable for its employees' violations of [42 U.S.C.] § 1981 under a respondent superior theory."), 42 U.S.C. section 1985(3), Di Maggio v. O'Brien, 497 F.Supp. 870, 76 (E.D. Pa. 1980) (holding "the Monell analysis that liability under § 1983 cannot be predicated on respondent superior applies with equal force to § 1985." (citations omitted)) and 42 U.S.C. § 1986..."). In the instant case, Plaintiffs seek to hold the City liable under 42 U.S.C. §§ 1981, 1983, 1985, and 1986 for the alleged wrongful actions of certain unnamed employees in the Prothonotary's Office. Plaintiffs have alleged no facts that can be construed as an allegation of a policy, practice, or custom on the part of the City of Philadelphia to tamper with documents in the Prothonotary's Office. Accordingly, Plaintiffs' claims under §§ 1981, 1983, 1985, and 1986 will be dismissed.

Having dismissed all claims over which we have original jurisdiction, we decline to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims pursuant to 28 U.S.C. § 1367(c).

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMERITA T. GUESON, and WOMEN'S HEALTH, INC. — CIVIL ACTION

v.

LAURA FELDMAN, ESQ., et al. — NO. 00 CV 1117

ORDER

AND NOW, this 22nd day of August, 2002, upon consideration of Defendant City of Philadelphia's Motion to Dismiss (Doc. No. 67) and Plaintiffs' response thereto, it is ORDERED that:

a) Plaintiffs' claims against the City of Philadelphia for violations of 42 U.S.C. §§ 1981, 1983, 1985, and 1986 are DISMISSED; and

2. Plaintiffs' state law claims against the City of Philadelphia are DISMISSED without prejudice.

BY THE COURT:

/s/
R. Barclay Surrick, Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMERITA T. GUESON, and WOMEN'S HEALTH, INC. — CIVIL ACTION

v.

LAURA FELDMAN, ESQ., et al. — NO. 00 CV 1117

MEMORANDUM AND ORDER

SURRICK, J. — **NOVEMBER 30, 2001**

Presently before this Court are Plaintiffs Emerita T. Gueson, and Women's Health, Inc.'s First Amended Complaint, including Supplemental Complaints A and B, and addenda thereto. Also before the Court are several motions to dismiss filed by the Defendants.

BACKGROUND

Pro se Plaintiff Emerita T. Gueson is a doctor of Filipino descent, who retained Defendant law firm Feldman-Pinto, P.C. to represent her in two actions in the Court of Common Pleas of Philadelphia County. One was a suit against Bell Atlantic over her incorrectly being listed in the Yellow Pages as a foot doctor. The other was against Timothy Hilbert, her former accountant. After unsatisfactory results in these lawsuits, Dr. Gueson brought two malpractice suits against Feldman-Pinto, P.C., in the Court of Common Pleas of Philadelphia County (the "Underlying Lawsuits"). The first of these suits alleged that her attorneys settled the Bell Atlantic case without her consent. In the second action, she alleged that they were negligent in the preparation of her case against Hilbert. These cases were dismissed by

Court of Common Pleas Judges Ackerman and Sheppard, respectively.

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CLERK OF COURT

Dr. Gueson's next made an appearance in December 1998, in the Eastern District of Pennylvania when she filed thee separate actions, 98 CV 6691, 98 CV 6693, and 98 CV 6725. In these lawsuits Dr. Gueson alleged claims of professional negligence, fraud, legal malpractice, intentional infliction of emotional distress and violations of the federal RICO statute, 42 U.S.C. § 1964, and 42 U.S.C. § 1981, against Feldman-Pinto, P.C., its two named partners, Laura Feldman, Esq., and Rosemary Pinto, Esq., an employee, Jill Anderson, the City of Philadelphia and the Prothonotary of the Court of Common Pleas of Philadelphia County. Specifically, in 98 CV 6691, Dr. Gueson alleged a cause of action under 42 U.S.C. § 1981 asserting that Feldman-Pinto settled the Bell Atlantic case without her knowledge because they thought the claim was worth too little to pursue. She also claimed a violation of civil RICO for Feldman-Pinto's alleged improper handling of the Bell Atlantic case, and a pattern of mishandling cases. In 98 CV 6693, she alleged that Feldman-Pinto violated 18 U.S.C. § 1621, 18 U.S.C. § 401, 18 U.S.C. § 1001, and RICO, as well as state laws by conspiring with employees of the Prothonotary of the Court of Common Pleas of Philadelphia County to tamper with the dockets of the Underlying Lawsuits, thus resulting in their dismissal by Judges Ackerman and Sheppard. Finally, 98 CV 6725 asserted legal malpractice claims including violations of 42 U.S.C. § 1981 based upon defendants' "discriminatory and arrogant attitude" towards Gueson's accountant because of his speech impediment and the low value of her cases. The three

cases were assigned to the Honorable Charles R. Weiner. Judge Weiner dismissed all of the federal causes of action with prejudice and declined to exercise supplemental jurisdiction over the state law claims. Gueson v. Feldman, 1999 WL 391478 (E.D. Pa. 1999)

Dr. Gueson has returned.[1] Her current suit contends that the Underlying Lawsuits were wrongly and unlawfully dismissed by Judges Ackerman and Sheppard because the dismissals were "based upon tampered with documents, whch was politically motivated, and in retaliation to Plaintiff Gueson's exercise of her statutorily protected activity for public concern." First Amended Complaint, P. 2. The allegations in Plaintiff's First Amended Complaint and "Supplementary Complaints" involve: a) new legal malpractice and discrimination claims against Feldman-Pinto, P.C. and various of its employees; b) allegations of document tampering and wrongful dismissal of the Underlying Lawsuits against Philadelphia County and Judges Ackerman, Bernstein, Herron, and Sheppard, as well as President Judge Bonavitacola of the Court of Common Pleas of Philadelphia County (the "CCP Judges"); c) various civil rights and conspiracy claims against Gustine Pelagatti, Esq., who represented one of Dr. Gueson's former patients in an unrelated medical malpractice action, and Bernard Nathanson, M.D., who served as plaintiffs expert witness in that unrelated action; and d) state law causes of action against Defendant Francis Grey relating to his expert testimony in the Hilbert case.[2]

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[1]The caption to this case notes two plaintiffs, Dr. Gueson and Women's Health, Inc. The Amended Complaint makes clear that the lawsuit essentially Dr. Gueson alone.

[2]Dr. Gueson's filings are voluminous and at times difficult to comprehend. They include claims that appear to have no basis in law or fact and tend to stretch one's sense of reality. We have given Dr. Gueson a significant degree of latitude in consideration of her status as a *pro se* litigant. This had

STANDARDS

I. 12(b)(6) Motion to Dismiss Standard

A court should dismiss a complaint pursuant to Fed. R. Civ. P. 12(b)(6) only if it finds that the plaintiff cannot prove any set of facts, consistent with the complaint, which would entitle the plaintiff to relief Hishon v. King & Spalding, 467 U.S. 69, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984). In making this determination, the court must accept as true all allegations made in the complaint, and all reasonable inferences that may be drawn from those allegations. Rocks v. Phladelphia, 868 F.2d 644, 645 (3d Cir. 1989). The court must view these facts and inferences in the light most favorable to the plaintiff. Id. The court may draw these facts and inferences from the complaint, exhibits attached to the complaint, matters of public record, and undisputedly authentic documents if the plaintiffs claims are based upon those documents. Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993).

II. Liberal Construction of *Pro Se* Complaint

A *pro se* complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)).

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made the writing of this opinion an interesting but somewhat difficult exercise.

ANALYSIS

I. Plaintiffs' Claims Against the CCP Judges

Dr. Gueson's claims against the CCP judges stem from the dismissals by Judges Ackerman and Sheppard of the Underlying Lawsuits. Her suits against these two judges relate directly to those dismissals. Her suit against Judge Bernstein arises from his refusal to grant a Petition for Emergency Relief. Finally, her claims against President Judge Bonavitacola and Administrative Judge Herron stem from what Dr. Gueson characterizes as their failure to stop the unnamed officers of the Prothonotary from tampering with the dockets of the Underlying Lawsuits.

Count I of Plaintiff's Complaint alleges a violation of 42 U.S.C. § 1981. Dr. Gueson appears to claim that the CCP Judges discriminated against her (in favor of Defendant Feldman-Pinto, P.C.) because she is "Filipino of Oriental descent," "does not have any political connection," and because she is a physician. Plaintiffs' First Amended Complaint, P. 11. She believes the CCP Judges improperly ruled against her and/or failed to stop the alleged docket tampering out of discriminatory bias.

Count II of the Complaint alleges causes of action under §§ 1983, 1985, and 1986 against the CCP Judges, for violations of Dr. Gueson's due process rights via the dismissal of the Underlying Lawsuits. Plaintiffs claim that the dismissals were "politically motivated" and part of a conspiracy to injure the Plaintiff and "keep the status quo of the inefficiency of the Court of Common Pleas from the public eye for their own political advancement." Plaintiffs' First Amended Complaint, P. 16.

Count III alleges causes of action against the CCP Judges under §§ 1983 and 1985 for conspiracy to violate Dr. Gueson's equal protection rights by dismissing the Underlying Lawsuits.

Count IV alleges causes of action under §§ 1983 and 1985 against "Philadelphia County, through and by their agents and employees, personally, as politicians and acting under the color of state law." Dr. Gueson claims that Judges Sheppard and Ackerman "intentionally retaliated against Plaintiff Gueson by dismissing the two lawsuits with prejudice... [because Dr. Gueson] engag[ed] in a statutorily protected activity of public concern."[3]

Count VI alleges causes of action under §§ 1985 and 1986 against the CCP Judges for dismissing the Underlying Lawsuits despite Dr. Gueson's claims that the dockets had been tampered with. Dr. Gueson alleges that the CCP Judges did this in order to "keep the incompetence and corruption in the state Court of Common Pleas of Philadelphia County out of Public view."

Count XI alleges a cause of action against the CCP Judges for intentional infliction of emotional distress based on the dismissal of the Underlying Lawsuits.

Count V of Supplementary Complaint A alleges a cause of action against the CCP Judges for intentional infliction of emotional distress. This claim seems to be identical to Count XI of the Complaint.

The CCP Judges have filed a Motion to Dismiss for Failure to State a Claim.

a) Plaintiffs' Claims Against Judges Ackerman, Sheppard, and Bernstein

In their Motion to Dismiss, Defendants CCP Judges contend that Plaintiffs' claims against Judges Sheppard, Ackerman, and Bernstein are barred by judicial immunity. We agree.

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[3]Dr. Gueson does not make clear just what that activity is. It appears, however, that this is a reference to the CCP Judges' alleged attempt to cover up the alleged incompetency of the Court of Common Pleas of Philadelphia County.

The Supreme Court has repeatedly held that, generally, a judge is immune from a suit for money damages. See, e.g., Forrester v. White, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988); Cleavinger v. Saxner, 474 U.S. 193, 106 S.Ct. 496, 88 L.Ed.2d 507 (1985); Dennis v. Sparks, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980); Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978). Indeed, judicial immunity is not overcome even by allegations of bad faith or malice, because resolution of such claims normally requires discovery and, eventually, trial. See Pierson v. Ray, 386 U.S. 547, 554, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288 ("[I]mmunity applies even when the judge is accused of acting maliciously and corruptly."). Our Supreme Court has made it clear that judicial immunity is overcome only in two discreet situations. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Forrester, 484 U.S. at 227-229. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Stump, 435 U.S. at 356-57.

As mentioned above, the gravamen of Dr. Gueson's claims against Judges Sheppard and Ackerman is that they dismissed the Underlying Lawsuits despite her allegations of docket tampering. Dismissing a lawsuit is clearly an action taken in a judge's judicial capacity. Further, Plaintiffs do not dispute the fact that Judges Ackerman and Sheppard had jurisdiction over the Underlying Lawsuits. Under the circumstances, Plaintiffs' claims against those judges are barred by judicial immunity.

Similarly, Plaintiffs' claims against Judge Bernstein stem from his denial of Dr. Gueson's Motion for Extraordinary Relief filed on May 19, 1999. This action also fits squarely within the Supreme Court's definition action by a judge that is judicial in nature. See Mireles v. Waco, 502 U.S. 9, 12-13, 112 S.Ct. 286,288, 116 L.Ed.2d 9

(1991) (holding that whether an act by a judge is a judicial one relates "to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity," and finding that a judge's approval of the unreasonable use of force by police to compel the presence of an attorney who had failed make a scheduled appearance was an act within the judge's judicial capacity). Again, Plaintiffs do not claim that Judge Bernstein lacked proper jurisdiction over the Motion for Extraordinary Relief. Therefore, Plaintiffs' claims against Judge Bernstein are also barred by judicial immunity.

b) Plaintiffs' Claims Against President Judge Bonavitacola and Judge Herron

Dr. Gueson claims that Judges Bonavitacola and Herron violated her constitutional rights and are liable under §§ 1981, 1985, and 1986 because they failed to stop the unnamed officers of the Prothonotary from tampering with the dockets in the Underlying Lawsuits resulting in the dismissal of that lawsuit. Defendants argue that the Rooker-Feldman Doctrine bars the Plaintiffs' claims for damages because those claims are based on the assertion that the Underlying Lawsuits in state court were wrongly decided. As the CCP Judges note, the Rooker-Feldman doctrine bars federal district court review of state court proceedings where entertaining the federal claim would be the equivalent of appellate review of the state court order. See Earnst v. Child and Youth Services of Chester County, 108 F.3d 486, 491 (3d Cir. 1997). The doctrine also bars consideration of claims "inextricably intertwined" with the purported federal claim. See Gulla v. North Strabane Township, 146 F.3d 168, 171 (3d Cir. 1998).

It does not appear that this Court is being asked to directly review the decision of the Philadelphia Court of Common Pleas. Therefore, the question is whether the

Plaintiffs' federal claims against Judges Bonavitacola and Herron under §§ 1981, 1983, 1985, and 1986 are "inextricably intertwined" with the decisions in the Underlying Lawsuits. According to the Third Circuit, a federal claim is inextricably intertwined with a prior state adjudication if:

> The federal claim succeeds only to the extent that the state court wrongly decided the issues before it. In other words, Rooker-Feldman precludes a federal action if the relief requested in the federal action would effectively reverse the state decision or void its ruling. Accordingly, to determine whether Rooker-Feldman bars [plaintiffs'] federal suit requires determining exactly what the state court held... *If the relief requested in the federal action requires determining that the state court's decision is wrong or would void the state court's ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit.*

Gulla v. North Strabane Township, et al., 146 F.3d 168 (3d Cir. 1998) (quoting FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 839-40 (3d Cir. 1996)) (emphasis added, alterations in the original). In order to determine whether or not the instant claims are inextricably intertwined with the state court adjudication, this Court must determine whether the relief sought in the federal claim requires a determination that the Court of Common Pleas of Philadelphia County improperly dismissed the Underlying Lawsuits. If it does, then the federal claims must be dismissed under Rooker-Feldman.

i) The § 1983 Claim

Plaintiffs' claims under 42 U.S.C. § 1983 are barred by the Rooker-Feldman. To state a claim under § 1983, a plaintiff must show that the defendant, through conduct sanctioned under the color of state law, deprived her of a federal constitutional or statutory right. See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 907 (3d Cir. 1997) (citing Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), *overruled on other grounds*, Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986)). This goes to the heart of the decisions in the Underlying Lawsuits. Plaintiffs claim that because Judges Bonavitacola and Herron did not stop the alleged docket tampering, Judges Ackerman and Sheppard improperly dismissed the Underlying Lawsuits, thus depriving the Plaintiffs of their federal constitutional or statutory rights. In order to find such a constitutional violation, this court would have to determine that the Underlying Lawsuits should not have been dismissed. Without that determination, the court could not conclude that Plaintiffs have suffered a deprivation of their rights. Therefore, we conclude that the Rooker-Feldman Doctrine bars the Plaintiffs' suit under § 1983.

ii) The § 1985 Claim

42 U.S.C. § 1985(3) provides, in pertinent part:

> If two or more persons in any State or Territory conspire... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws... [and] do, or cause to be done, any act in furtherance of the object of such conspiracy, *whereby another is injured in his person or property, or deprived of having and exercising any*

> *right or privilege of a citizen of the United States*, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(emphasis added). Under this statute, the Plaintiffs must show either that a) they have been injured in their person or property, or b) deprived of having and exercising any right or privilege of a citizen of the United States. A determination by this court that either of those requirements has been satisfied necessarily requires that the court find that the Underlying Lawsuits should not have been dismissed. Therefore, Plaintiffs' claims under § 1985(3) are also barred by the Rooker-Feldman Doctrine.

iii) The § 1986 Claim

A suit under 42 U.S.C. § 1986 may be maintained only in tandem with a § 1985 claim. Because this court has dismissed Plaintiffs' § 1985 claim Plaintiffs § 1986 claim must also be dismissed. See McCalden v. California Library Ass'n, 955 F.2d 1214 (9th Cir. 1990); Grimes v. Smith, 776 F.2d 1359 (7th Cir. 1985); Walter J. Mintz, Inc. v. State of Pennsylvania, 1999 WL 387037 (E.D. Pa. 1996) (citing Rogers v. Mount Union Borough by Zook, 816 F.Supp. 308 (M.D. Pa. 1993)).

iv) The § 1981 Claim

To establish a cause of action under § 1981, a plaintiff must prove that the defendant was motivated by a racially discriminatory purpose - that is, the plaintiff must prove that the defendant intentionally and purposefully discriminated against her because of race. See Croker v. Boeing Co., 662 F.2d 975 (3d Cir. 1981). Actions under § 1981 are permitted, inter alia, where a plaintiff has not been afforded equal access to the justice system of the United States due to such discrimination. See Patterson v. McLean Credit Union, 491 U.S. 164, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989). The instant claim

under § 1981 appears to be that Judges Bonavitacola and Herron were motivated by racial animus and did not prevent unnamed employees of the Prothonotary's office from tampering with the docket as a result of which her cases were dismissed and her access to the judicial system was therefore compromised. Under the circumstances the determination of whether the Plaintiff was denied equal access to the justice system in violation of Section 1981 and the propriety of the actions of the state court in dismissing these cases are "inextricably intertwined." Therefore, the Rooker-Feldman Doctrine is a bar to Plaintiffs' § 1981 claim.

v) Plaintiffs' State Law Claims

Count XI of the Amended Complaint and Count V of Supplementary Complaint A, allege state law causes of action against the CCP Judges. Because we have dismissed all of Plaintiffs' federal law claims against the CCP Judges, we exercise our discretion pursuant to 28 U.S.C. § 1367(c) and decline to exercise supplemental jurisdiction over those state law claims.

II. Motions to Dismiss by Defendants Pelagatti and Nathanson

Dr. Gueson's Complaint alleges causes of action against Defendants Bernard Nathanson, M.D., and Gustine J. Pelagatti, Esq., stemming from a medical malpractice suit filed against Dr. Gueson in which Defendant Pelagatti was plaintiff's counsel and Dr. Nathanson acted as an expert witness for the plaintiff. (the "Medical Malpractice Suit").[4] Dr. Gueson claims that Pelagatti discriminated against her as a "Filipino of

[4]Timothy and Joseph Kinniry represented by Defendant Pelagatti, filed the medical malpractice suit in September 1992, alleging that during their mother's pregnancy Dr, Gueson misdiagnosed her urinary incontinence as premature rupture of the membrane, and induced labor, thereby causing the Kinniry brothers to be born with cerebral palsy.

Oriental descent, and a foreign medical graduate" by filing and pursuing the medical malpractice suit against her, and not against "three other white Irish doctors."[5] Further, Dr. Gueson claims that Pelagatti filed the medical malpractice suit "negligently, without asking for the medical records first, researching the cases, and engaging the opinion of an expert." Supplementary Complaint B, P. 38. Next, Dr. Gueson alleges that Pelagatti and Nathanson engaged in fraud in the course of the medical malpractice suit. She claims that Nathanson, as the plaintiff's expert, and motivated in part by racial animus, filed an expert report without ever reading the relevant medical files.

Based upon those allegations, Dr. Gueson's Supplementary Complaint B lists several causes of action against Defendants Pelagatti and Nathanson including: a) Count I against Pelagatti for violation of 42 U.S.C. § 1981; b) Count II against Pelagatti for violation of the Lanham Act, 15 U.S.C. § 1125(a) for listing himself in the yellow pages as an expert in cerebral palsy malpractice suits; c) Count III against Pelagatti and Nathanson for intentional infliction of emotional distress; d) Count IV against Pelagatti and Nathanson for violation of 42 U.S.C. §§ 1983 and 1985; and e) Count V against Pelagatti and Nathanson for defamation. In addition, Dr. Gueson's Addendum to Supplementary Complaint B alleges a cause of action against Pelagatti and Nathanson for violations of the civil RICO provisions codified at 18 U.S.C. § 1962(c) & (d). Pelagatti and Nathanson have filed motions to dismiss all of these claims.

Initially, we note that Plaintiffs' claims under 42 U.S.C. §§ 1981, 1983, and 1985(3) are time-barred, and will therefore be dismissed with prejudice. Although none

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[5]Just how these three unnamed white Irish doctors are involved in the circumstances surrounding the Medical Malpractice Suit is not clear from Dr. Gueson's papers.

of these provisions contain statutes of limitations, they are all governed by the relevant state's statute of limitations for personal injury actions. See 42 U.S.C. § 1988. In this case, the relevant state is Pennsylvania, and the applicable statute of limitations is two years. See Lake v. Arnold, 232 F.3d 360 (3d Cir. 2000) (applying two year period to § 1983 and § 1985(3) actions); Goodman v. Lukens Steel Co., 777 F.2d 113 (3d Cir. 1985) (applying two year period to § 1981 actions).

Pelagatti filed the medical malpractice suit against Dr. Gueson in 1992, and the case settled in 1996. The allegations in her claims under §§ 1981, 1983, and 1985(3) aver discrimination in the actual filing and pursuit of the medical malpractice suit. Plaintiffs had all the information they needed to file their claims in 1992, when the medical malpractice suit was filed. Plaintiffs' contention that Dr. Gueson did not discover that Pelagatti and Nathanson had committed fraud against her until 1999, when she learned that Pelagatti and Nathanson regularly filed lawsuits without researching the facts and regularly submitted medical reports without reviewing the medical records. This information appears to have no relevance to her federal claims. We are not aware of any reason why the statute of limitations did not begin to run in 1992, or at least 1996, when the medical malpractice case was settled. We are further unaware of any reasonable basis for tolling the two year period. The statute of limitations on these claims ran no later than 1998. The current suit was filed in March of 2000. Therefore Plaintiffs' §§ 1981, 1983, and 1985(3) claims must be dismissed as time-barred. They are also barred on substantive grounds.

a) The § 1981 Claim

Dr. Gueson's § 1981 claim alleges that she was intentionally discriminated against, by Pelagatti, Associated & Gustine Pelagatti. She alleges that she was treated differently from the three other white Irish

doctors, who treated Mrs. Kinniry and was denied equal protection under the law as provided for by the 14th Amendment of the Constitution because of her race, national origin, and because she is a foreign medical graduate. Plaintiff's Supplementary Complaint B, P. 40. Defendant Pelagatti has moved that this claim be dismissed for failure to state a claim on the grounds that Dr. Gueson has not alleged "state action" as required under § 1981. Though we do not agree with Mr. Pelagatti that § 1981 always requires a showing of state action, we will dismiss this cause of action nonetheless because Plaintiff fails to state a claim.

42 U.S.C. § 1981 is of limited scope. An examination of the statutory language and the relevant case law reveals four distinct interests subject to protection against racial discrimination by the statute: (1) the "right to make and enforce contracts"; (2) the right of equal access to the judicial process, to "sue, be parties, give evidence"; (3) "full and equal benefit of all laws and proceedings for the security of persons and property"; and (4) the right to "like punishments, pains, penalties, taxes, licenses and exactions of every kind." Even looking at Dr. Gueson's Complaint through a forgiving *pro se* lens, we conclude that none of these interests are implicated by Dr. Gueson's claims. Certainly, no one would argue that Dr. Gueson's rights to contract or to equal punishments have been infringed. As for the "equal benefit of laws" interest, while § 1981 generally does protect against private discrimination, thereby creating no necessity for a showing of state action, see, e.g., Runyon v. McCrary, 427 U.S. 160, 96 S.Ct. 2586, 49 L.Ed.2d 415 (1976); Tillman v. Wheaton-Haven Rec. Ass'n., 410 U.S. 431, 93 S.Ct. 1090, 35 L.Ed.2d 403 (1973); Caldwell v. Nat'l Brewing Co., 443 F.2d 1044 (3d Cir. 1971), the Third Circuit has strongly suggested that claims under the Equal Benefit of Laws clause do require state action. See Mahone v. Waddle, 564 F.2d 1018 (3d Cir. 1977) (noting that "the concept of

state action is implicit in the equal benefit clause"), *cert. denied*, 438 U.S. 904 (1978).

This leaves only the Judicial Process clause as a possible predicate for Dr. Gueson's § 1981 claim. See Patterson v. McLean Credit Union, 49 U.S. 164, 177, 109 S.Ct. 2363, 2373, 105 L.Ed.2d 132 (1989) (holding that § 1981 "covers wholly private efforts to impede access to the Courts"). However, Dr. Gueson has alleged no private effort to impede access to the courts. Though it is not clear from her Complaint just what she alleges to be the § 1981 violation, we perceive that she has alleged that Pelagatti was motivated by racial aninus when he filed the malpractice suit against her and offered medical expert testimony without reviewing the relevant medical files. Dr. Gueson's rights to sue, be a party, or give evidence simply have not been infringed. Therefore this Court will dismiss her § 1981 claim.

b) The Lanham Act Claim

Count II of Dr. Gueson's Supplementary Complaint B alleges a cause of action against Mr. Pelagatti for violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Dr. Gueson appears to claim that Pelagatti (as evidenced by his alleged mishandling of the medical malpractice suit) is clearly not an expert in cerebral palsy malpractice lawsuits. Nevertheless, he advertises himself as such in the Yellow Pages. By so doing, he has caused potential medical malpractice plaintiffs to hire him as counsel for cerebral palsy medical malpractice lawsuits, to the detriment of those, like Dr. Gueson, who are forced to endure the consequences of his apparent lack of expertise. Defendant Pelagatti moves for dismissal on the grounds that Dr. Gueson has no standing to sue under Section 43(a) of the Lanham Act.

On its face, Section 43(a) suggests an almost limitless range of people with standing to bring suit for false advertising. The statute itself states:

> Any person who [violates the statute] shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

42 U.S.C. § 1125(a)(1). Dr. Gueson suggests that this language provides her with standing even though she is neither a commercial enterprise, nor in competition with Pelagatti. Plaintiff Women's Health, Inc. points out that it is a commercial enterprise (though again not in competition with Mr. Pelagatti).[6] Indeed, the Third Circuit has undertaken a "plain meaning interpretation" of section 43(a) to grant standing to persons who believe that they have been damaged by alleged false advertising even though not in competition with the defendent. See, e.g., Thorn v. Reliance Van Company, Inc., 736 F.2d 929 (3d Cir. 1984).

However, the Third Circuit has also placed limitations on who has standing to bring a section 43(a) claim. In Serbin v. Ziebart Intern. Corp., Inc., 11 F.3d 1163 (3d Cir. 1993), the Third Circuit noted that the Lanham Act is primarily intended to protect commercial interests. The statute "provides a private remedy to a commercial plaintiff who meets the burden of proving that its commercial interests have been harmed by a competitor's false advertising." Id. at 1175. Further, in Ditri v. Coldwell Banker, 954 F.2d 869, 872 (3d Cir. 1992), the Third Circuit held that in order to bring a § 43(a) action, a plaintiff must allege that there is a "likelihood of injury to the plaintiff in terms of declining sales, loss of goodwill, etc." Though the Third Circuit has held that the injured commercial interest need not be in

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[6]As a general matter, the Complaint as a whole makes little or no mention of Women's Health, Inc., and it is not clear to the Court why it is included as a plaintiff, or what claims it asserts against any of the Defendants with, or independent from Dr. Gueson.

direct competition with the alleged perpetrator's commercial interest, Thorn v. Reliance Van Co., Inc., 736 F.2d 929, 933 (3d Cir. 1984), it has also held that there must be some *reasonable and cognizable* commercial interest which has been or potentially will be injured by the Lanham Act violation, Ditri, 954 F.2d at 872. Though the Thorn opinion never precisely defined the term "reasonable interest," it did suggest that to be "reasonable," the alleged interest must be "sufficiently direct." See id. at 933. In addition, the Third Circuit has considered other factors when analyzing the reasonableness of an alleged interest including: a) whether it is of a type that Congress sought to redress in providing a private remedy for violations of the Lanham Act; b) the proximity or remoteness of the party to the alleged injurious conduct; c) the speculativeness of the damages claim; and d) the risk of duplicative damages or complexity in apportioning damages. Conte Bros. Automotive, Inc. v. Quaker State-Slick 50, Inc., 165 F.3d 221, 233-35 (3d Cir. 1998).

Applying these standards, we find that Dr. Gueson does not have standing to bring her Lanham Act claims against Mr. Pelagatti. First, Dr. Gueson's alleged interest is indirect at best. Second, Dr. Gueson's alleged interest is not the type of interest that Congress sought to protect through the Lanham Act. In the context of the false advertising provisions, those interests are "secur[ing] to the business community the advantages of reputation and good will by preventing their diversion from those who have created them to those who have not. Conte Bros., 165 F.3d at 234 (citing S. Rep. No. 1333, 79th Cong., 2d Sess. (1946), reprinted in 1946 U.S.C.C.A.N. 1274, 1275). While Dr. Gueson has alleged some loss of good will and reputation, it is only indirectly, if at all, through Pelagatti's allegedly false advertising. The real source of any loss is the fact that despite Pelagatti's alleged incompetence, she chose to settle the medical

malpractice suit which he brought against her. Clearly, Dr. Gueson's alleged injury is remote and her claimed injuries are highly speculative.

We find, that Dr. Gueson has failed to state a sufficiently reasonable and cognizable commercial interest which has been or potentially will be injured by the Lanham Act violation. Thus, we find that she has no standing to bring her claims against Mr. Pelagatti, and will dismiss them with prejudice.

c) Plaintiffs' § 1983 Claim

In Count IV of Supplmentary Complaint B, Dr. Gueson claims; that Pelagatti and Nathanson have filed and pursued the medical malpractice suit against Dr. Gueson based on racial animus. In any claim under 42 U.S.C. § 1983, the plaintiff must make a showing of state action. American Mfs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999); Hafer v. Melo, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). Defendants Pelagatti and Nathanson are private actors. Mr. Pelagatti is a private attorney, and Dr. Nathanson is a private physician. There is simply no basis for categorizing either as state actors. Contrary to Dr. Gueson's belief, the term "state action" requires more than simply an "action" that involves the "State." Filing a lawsuit in state court, is not for § 1983 purposes "state action;" nor does it turn a private citizen into a state actor. Plaintiff § 1983 claim is fatally deficient.

d) Plaintiffs' § 1985 Claim

In Count IV, Dr. Gueson asserts that Defendants Pelagatti and Nathanson conspired to violate her constitutional rights in violation of 42 U.S.C. § 1985(3). In order to state a claim under 1985(3), a plaintiff must allege that defendants, motivated by a class-based invidiously discriminatory animus, conspired to deprive plaintiff of the equal protection rights of the laws or of equal privileges and immunities under the laws and that plaintiff was thereby injured. Bougher v. University of

Pittsburgh, 882 F.2d 74 (3d Cir. 1989) (citing Griffin v. Breckinridge, 403 U.S. 88, 102-03, 91 S.Ct. 1790, 1798-99, 29 L.Ed.2d 338 (1971)).

Dr. Gueson's Supplementary Complaint B states:

> Defendants' Pelagatti, and Nathanson, acting under the color of state law conspired maliciously to injure Gueson's reputation by agreeing jointly, severally to write a report which was totally false, by saying that the premature rupture of thc membranes was iatrogenic... As a direct and proximate result of the false expert medical report, Gueson had to give up her Constitutional Rights and Civil Rights because the Prothonotary of the Court of Common Pleas, refused to accept the Motion For Summary Judgment based on the Minor Tolling Act, which her lawyer tried to file twice [thereby forcing Gueson] to settle because Gueson's ethical, competent, and honest lawyers were no match to Pelagatti's fraudulent Conduct.

Plaintiffs' Supplementary Complaint B, P. 42. Defendants Pelagatti and Nathanson assert that this claim should be dismissed because the Plaintiffs have not alleged that their conduct was motivated by "class-based discriminatory animus." We frankly cannot comprehend how Defendants have arrived at this conclusion. The Complaint is full of charges that Defendants' conduct was motivated by discrimination against Dr. Gueson because she is "Filipino of Oriental descent." Nevertheless, we find that Dr. Gueson has failed to state a claim under § 1985(3) upon which relief can be granted.

In addition to the requirement that the defendants be motivated by class-based discrimination, they must

also conspire to deprive the plaintiff of her constitutional or statutory rights. Plaintiffs' Complaint does not sufficiently state the existence of such a conspiracy. At best, the Supplementary Complaint B suggests that Pelagatti and Nathanson conspired to submit a false medical report in an effort to win their case against Dr. Gueson. This, of course, is not a deprivation of a constitutional or statutory right.

In addition, § 1985(3) requires that the plaintiff actually be injured. The only injury suggested by the Plaintiffs in the Supplementary Complaint B is that the Prothonotary of the Court of Common Pleas refused to accept Dr. Gueson's Motion for Summary Judgment, thereby forcing Dr. Gueson to settle the case. Plaintiffs have alleged no causal nexus between the allegedly false expert report and the Prothonotary's refusal to accept the Motion. Even if such a nexus were sufficiently alleged, the Rooker-Feldman doctrine, discussed above, would likely preclude this court from hearing such a claim. In order to establish that Dr. Gueson was injured by the allegedly false report, this Court would have to conclude that the Court of Common Pleas' refusal to accept or consider Gueson's Motion for Summary Judgment was in error. As such, Dr. Gueson's 1985(3) claim is "inextricably intertwined" with the state court action, and thus review of the claim is forbidden under Rooker-Feldman. See Gulla v. North Strabane Township, 146 F.3d 168, 171 (3d Cir. 1998).

e) Plaintiffs' Civil RICO Claims

In Counts VI and VII of Plaintiffs' Supplementary Complaint B (contained in Plaintiffs' Addendum to Supplementary Complaint B), Plaintiffs allege violations of 18 U.S.C. 1962(c) and (d) by Defendants Pelagatti and Nathanson. As discussed above, Timothy and Joseph Kinniry, represented by Defendant Pelagatti, filed the medical malpractice suit in September 1992, alleging that during their mother's pregnancy Dr. Gueson

misdiagnosed her urinary incontinence as premature rupture of the membrane, and induced labor, thereby causing the Kinniry brothers to be born with cerebral palsy. In support of his case, Pelagatti provided a medical expert report from Defendant Dr. Nathanson. Based at least in part on the strength of this medical report, Dr. Gueson settled the case in 1996, and has since been listed in the "National Data Bank."[7]

Dr. Gueson contends that in 1999, while preparing for a separate litigation, she discovered that Pelagatti had filed the Kinniry case without ever researching the facts, and that Dr. Nathanson had compiled and submitted his medical expert report without ever examining the medical records surrounding the alleged acts of medical malpractice. She alleges that Pelagatti and Nathanson have, since approximately 1970, engaged in a pattern of such behavior, filing medical malpractice lawsuits and submitting fraudulent, unresearched medical expert reports in the hopes of inducing a quick settlement to be paid out of Pennsylvania's CATFUND, a catastrophic medical insurance fund. As predicates for the RICO violation, Dr. Gueson alleges that Pelagatti and Nathanson have used the U.S. Mail and the telephone on several occasions to transmit the allegedly fraudulent medical expert reports. Dr. Gueson allges that Pelagatti's law firm is the "enterprise" through which defendants engaged in a pattern of activity in violation of 18 U.S.C. § 1962(c).

Defendants Pelagatti md Nathanson seek dismissal of the RICO claims based on their contention that § 1962 is a criminal statute containing no private right of action. They are incorrect. While RICO may

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[7]Dr. Gueson does not explain what the National Data Bank is, but we assume she is referring to the National Practitioner's Data Bank, a listing of medical professionals who have settled or had adverse judgments in medical malpractice cases.

primarily be a criminal statute, it also provides for civil remedies, including a cause of action for treble damages, available to "[a]ny person injured in his business or property by reason of a violation of section 1962." 18 U.S.C. § 1964(c). See also Seville Indus. Machinery Corp. v. Southmost Machinery Corp., 742 F.2d 786 (3d Cir. 1984). Because Dr. Gueson is *pro se*, the Court will construe her claims as brought under 18 U.S.C. § 1964(c) with §§ 1962(c) and (d) as its underlying violations.

Pelagatti and Nathanson correctly point out that Plaintiffs' RICO claims are barred by the statute of limitations. For federal RICO claims under § 1964, the statute of limitations is four (4) years. See Agency Holding Corp. v. Malley-Duff Assocs., 483 U.S. 143, 156, 107 S.Ct. 2759, 2767, 97 L.Ed.2d 121 (1987). The medical malpractice suit was filed in 1992. Dr. Gueson, however, claims that her RICO cause of action did not accrue, and ths statute of limitations did not begin to run, until 1999, when she discovered that her injury (being forced to settle the medical malpractice suit) was caused by Defendants' racketeering activities.

In Annulli v. Panikkar, 200 F.3d 189, 192, 195 (3d Cir. 1999), and Rolo v. City Investing Co. Liquidating Trust, 155 F.3d 644, 656 (3d Cir. 1998), the Third Circuit followed the "injury and pattern discovery" rule, under which "a civil RICO claim accrues and the statute of limitations begins to run when the plaintiff knew or should have known that each element of a civil RICO claim existed--namely, that he was injured, that the defendant was the source of this injury, and that a pattern of activity prohibited by RICO caused this harm." Annulli, 200 F.3d at 195. However, the Supreme Court rejected the "injury and pattern discovery" rule, see Rotella v. Wood, 528 U.S. 549, 120 S.Ct. 1075, 1078-80, 145 L.Ed.2d 1047 (2000), prompting the Third Circuit to adopt a less plaintiff-friendly "injury discovery rule." Under this rule, a court assessing the time of accrual of a

RICO claim and the running of its statute of limitations "must determine when the plaintiffs knew or should have known of their injury." Forbes v. Eagleson, 228 F.3d 471, 484 (3d Cir. 2000).

Analyzed under this framework, it is clear that Dr. Gueson at the very latest, was injured in 1995, when her attorney received a copy of the allegedly fraudulent medical expert report which Dr. Gueson alleges she relied upon, in part, to settle the case. By 1995, Dr. Gueson 1) knew or should have known that she had been injured (i.e. that a malpractice suit had been filed against her and that the fraudulent medical expert report had been filed, and 2) knew that her injury had been caused by another party (Pelagatti and Nathanson). This is what is required for a RICO cause of action to accrue under the Third Circuit's injury discovery test. See Forbes, 228 F.3d at 485.

Dr. Gueson argues that she could not have known of her injury until 1999 ~~when~~ she discovered that the medical malpractice suit was fraudulently filed and supported by a fraudulent medical expert report. This argument ignores the fact that Dr. Gueson is a doctor, who was represented by counsel during the medical malpractice lawsuit. If Dr. Nathanson's medical expert report was, as Dr. Gueson alleges, fraudulent, baseless and done without the benefit of any medical research or investigation whatsoever, Dr. Gueson clearly would have been able to recognize that fact at the time. Plaintiff's Complaint is devoid of any indication that Dr. Gueson made any attempt to look into Dr. Nathanson's report or test its accuracy or the legitimacy of its findings. Dr. Gueson alleges in her Amended Complaint that Defendants actively concealed their actions from her until she discovered it in 1999. The record is again devoid of any indication of active concealment by Pelagatti or Nathanson. It seems self evident that if, acting in concert, Dr. Nathanson fraudulently created and Pelagatti

fraudulently transmitted the medical report accusing Dr. Gueson of medical malpractice, without benefit of examining the relevant medical records or other adequate research into the case, Dr. Gueson, a doctor herself, surely should have been put on notice of at least the possibility that report was fraudulent and that she was the victim of a fraudulent scheme. She nevertheless voluntarily settled this case. We are satisfied that Dr. Gueson knew or should have known of her injury, if any, at the latest by 1995, and that there is no basis for any equitable tolling of the statute of limitations. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1386-1390 (3d Cir. 1994). The current suit was filed in March of 2000. Therefore the RICO claims are time-barred, and will be dismissed with prejudice.

f) Plaintiffs' State law claims

In Counts III and V of Plaintiffs' Supplementary Complaint B, Plaintiffs attempt to state causes of action for intentional infliction of emotional distress, and defamation, respectively. Because we have dismissed all of Plaintiffs' federal law claims against Defendants Pelagatti and Nathanson, we exercise our discretion pursuant to 28 U.S.C. § 1367(c) and decline to exercise supplemental jurisdiction over these claims.

III. Motion to Dismiss by Defendant Grey

Counts VIII and IX of Plaintiffs' Supplementary Complaint A allege state law causes of action against Defendant Francis G. Grey for professional negligence and fraud. Supplementary Complaint A contains various counts and accusations against Defendants Feldman-Pinto and its employees for mishandling Dr. Gueson's case against Timothy Hilbert, Dr. Gueson's former accountant. Many of Dr. Gueson's claims against Feldman-Pinto in this matter have already been dismissed by Judge Weiner. See Gueson v. Feldman, 1999 WL 391478 (E.D. Pa. 1999). In the course of the Hilbert litigation, Feldman-Pinto hired Defendant Grey as an

expert in the field of accounting. Dr. Gueson contends in the current suit that Defendant Grey essentially committed professional malpractice and breached a supposed duty to Dr. Gueson through a) "intentional and negligent failure to read the whole file;" b) "intentional and lack of diligence in handling the file;" c) "intentional failure to research the case;" and d) "intentional failure and gross negligence and failure to read the signature of the tax preparer." The fraud count stems from Dr. Gueson's allegations that Grey, in one of the actions dismissed by Judge Weiner, and again in an action in the Court of Common Pleas of Bucks County, "intentionally misled the court by claiming that he was not served."

Defendant Grey has filed a Motion to Dismiss the claims against him. That Motion will be Granted.

Count VIII, professional negligence, is purely a state law cause of action and is not related to any of the federal claims made by Dr. Gueson in this lawsuit. We therefore exercise our discretion pursuant to 28 U.S.C. § 1367(c) and decline to exercise supplemental jurisdiction over this claim. Moreover, Count IX alleging fraud, fails to state a cause of action. Whether Mr. Grey, or any other party in a federal or state court proceeding was or was not properly served is purely a procedural matter for the courts with jurisdiction over those actions to decide. Count IX is therefore dismissed with prejudice. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMERITA T. GUESON, et al. CIVIL ACTION

v.

LAURA FELDMAN, ESQ., et al. NO. 00 CV 1117

ORDER

AND NOW, this 30th day of November, 2001, it is hereby ORDERED that:

1. The Motion to Dismiss Plaintiffs' First Amended Complaint on Behalf of Defendants, President Judge Alex Bonavitacola, Judge John Herron, Judge Albert W. Sheppard, Jr., Judge Norman Ackerman, and Judge Mark Bernstein (Docket No. 7) is GRANTED and Plaintiffs' claims against President Judge Alex Bonavitacola, Judge John Herron, Judge Albert W. Sheppard, Jr., Judge Norman Ackerman, and Judge Mark Bernstein under 42 U.S.C. §§ 1981, 1983, 1985, and 1986 are DISMISSED. Plaintiffs' remaining state law claims against President Judge Alex Bonavitacola, Judge John Herron, Judge Albert W. Sheppard, Jr., Judge Norman Ackerman, and Judge Mark Bernstein are DISMISSED WITHOUT PREJUDICE to their being refiled in a state court of competent jurisdiction pursuant to 28 U.S.C. § 1367(c);

2. The motions filed by Defendants Gustine J. Pelagatti and Bernard Nathanson to dismiss Plaintiffs' first amended complaint and addendum to supplemental complaint B (Docket Nos. 14, 16,

21, and 24) are GRANTED and Plaintiffs' claims against Gustine J. Pelagatti and Bernard Nathanson under 42 U.S.C. §§ 1981, 1983, 1985; 15 U.S.C. § 1125(a); and 18 U.S.C. § 1961 et seq. are DISMISSED. Plaintiffs' remaining state law claims against Gustine J. Pelagatti and Bernard Nathanson are DISMISSED WITHOUT PREJUDICE to their being refiled in a state court of competent jurisdiction pursuant to 28 U.S.C. § 1367(c). Plaintiff Emerita T. Gueson's Motion in Opposition to the Motion of Gustine Pelagatti to Dismiss the First Amended Complaint (Docket No. 23) is DENIED; and

3. Motion of Defendant Francis Grey to Dismiss Plaintiffs' First Amended Complaint (Docket No. 29) is GRANTED and Plaintiffs' claim against Francis Grey for fraud is DISMISSED. Plaintiffs' claim against Francis Grey for professional negligence is DISMISSED WTTHOUT PREJUDICE to being refiled in a state court of competent jurisdiction pursuant to 28 U.S.C. § 1367(c).

BY THE COURT

/s/_____
R. Barclay Surrick, Judge